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In The Matter Of:

FRANK FISCHER

v.

**SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET
AL.**

NO. 2:05-CV-00763

JOHN MORRIS
November 21, 2006



THE HIGHEST QUALITY IN COURT REPORTING

FRANK FISCHER
SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.

JOHN MORRIS
November 21, 2006

(Pages 1 to 4)

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO. 2:05-CV-00763

FRANK FISCHER, an individual,
Plaintiff,

vs.

SYSCO FOOD SERVICES OF
CENTRAL ALABAMA, INC., et al.,
Defendants.

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NO.: CV-2005-1630

FRANK FISCHER, an individual,
Plaintiff,

vs.

SYSCO FOOD SERVICES OF
CENTRAL ALABAMA, INC., et al.,
Defendants.

DEPOSITION
OF

JOHN MORRIS
November 21, 2006

REPORTED BY: Teresa Turquitt Davis
Certified Court Reporter,
Registered Professional
Reporter and Notary Public

APPEARANCES

FOR THE PLAINTIFF:

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FOR THE DEFENDANT, SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC.:

Mr. Arnold W. Umbach, III
Attorney at Law
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Birmingham, Alabama 35209
-and-
Mr. T. J. Segrest
Attorney at Law
Carr Allison
100 Vestavia Parkway, St. 200
Birmingham, Alabama 35216

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STIPULATION

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the deposition of
JOHN MORRIS may be taken before Teresa
Turquitt Davis, Commissioner, Certified
Court Reporter, Registered Professional
Reporter and Notary Public;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the same
force and effect as if full compliance had
been had with all laws and rules of Court
relating to the taking of depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and assign
grounds at the time of trial, or at the
time said deposition is offered in
evidence, or prior thereto.

APPEARANCES (CONTINUING)

OTHERS PRESENT:

Lynda Wheat

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I N D E X

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A. John Timothy Morris.

Q. Mr. Morris, my name is Davis Middlemas. I'm representing Mr. Frank Fischer in this lawsuit we are here about today. I'm just going to ask you some questions. And if you need for me to repeat anything, just let me know. And if you need to take a break, that is fine as well.

A. Okay.

Q. Where do you work now?

A. Sysco Foods in Geneva.

Q. How long have you worked with Sysco Foods in Geneva?

A. December of '99 is when we folded out from Sysco Calera.

MR. UMBACH: December when?

THE WITNESS: '99 -- I'm sorry, this year, '05.

Q. '05?

A. I'm sorry, yes.

Q. Prior to December of 2005, where were you working?

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I, Teresa Turquitt Davis, a Certified Court Reporter and Registered Professional Reporter of Birmingham, Alabama, and a Notary Public for the State of Alabama at Large, acting as Commissioner, certify that on this date, as provided by the Federal Rules of Civil Procedure of the United States District Court, and the foregoing stipulation of counsel, there came before me at 184 Commerce Street, Montgomery, Alabama, on November 21, 2006, commencing at 2:38 p.m., JOHN MORRIS, witness in the above cause, for oral examination, whereupon the following proceedings were had:

JOHN MORRIS,

being first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. MIDDLEMAS:

Q. If you will, state your full name.

A. I worked for Sysco Calera out of Birmingham and I worked down in the panhandle, which is Pensacola, Panama City area.

Q. How long had you worked for Sysco Calera?

A. December '99 is when I first started working for them.

Q. Prior to December 1999, where did you work?

A. I worked for Shelton Trucking Company.

Q. Shelton?

A. Shelton, S-H-E-L-T-O-N.

Q. Where is that?

A. They are out of -- by Blountstown -- Altha, Florida, A-L-T-H-A, yeah, that is it, Altha, Florida.

Q. Where do you live now?

A. I live in Enterprise, Alabama.

Q. How long were you at Shelton Trucking?

A. About a couple of months,

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1 three months.
2 Q. Where did you work before
3 Shelton?
4 A. I was in the United States
5 Navy.
6 Q. How many years in the Navy?
7 A. Twenty-two.
8 Q. So your first job outside of
9 the Navy was Shelton?
10 A. Yes, sir.
11 Q. What did you do at Shelton, or
12 what was your job title?
13 A. I was a truck driver.
14 Q. And you said you left there
15 after two or three months, and then went
16 to Sysco?
17 A. Yes.
18 Q. Hired into Sysco as what?
19 A. A delivery associate.
20 Q. Delivery associate?
21 A. Yes, sir.
22 Q. Can you tell me what a
23 delivery associate does?

1 Q. Okay. You were hired into
2 that position in December of 1999?
3 A. Yes, sir.
4 Q. Did you keep that position
5 your entire time?
6 A. No. I moved to shuttles, I
7 would say around September of 2000.
8 Q. To shuttle driver?
9 A. Shuttle driving, yes. I
10 shuttled out of the Pensacola, Florida
11 yard.
12 Q. That was in September of 2000?
13 A. Yes.
14 Q. Did you maintain that
15 position?
16 A. Until 2003 when I was promoted
17 to what we call DTS.
18 Q. What does DTS stand for?
19 A. District transportation
20 supervisor.
21 Q. District what?
22 A. Transportation supervisor.
23 Q. What does the position of

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1 A. They are responsible for
2 operating a single axle tractor with a
3 20-foot trailer, depending on -- and
4 delivering food, groceries to customers.
5 Q. I believe Mr. Fischer
6 testified, he described his position as
7 shuttle driver?
8 A. Yes, sir.
9 Q. That is different than a
10 delivery associate?
11 A. Yes, we have two jobs.
12 Delivery associates work during the day
13 and shuttle drivers work at night. They
14 shuttle the trailers from the Sysco house
15 in Birmingham down to our yards down in
16 the panhandle.
17 Q. And you mean a delivery
18 associate, you are doing --
19 A. The daytime deliveries to
20 customers.
21 Q. Can I describe it as short
22 haul around the area?
23 A. Yes, sir.

1 district transportation supervisor entail?
2 A. Managing -- I was responsible
3 for my district, which was the panhandle,
4 Pensacola, Panama City, making the
5 schedules, making sure on-time deliveries,
6 schedules for both shuttle drivers and day
7 drivers, coordinating between the sales
8 force to make sure drivers got the
9 deliveries done and coordinating our
10 operation with Birmingham.
11 Q. And so what you just
12 described, are you supervisor over all of
13 these drivers?
14 A. Yes, sir.
15 Q. How many persons overall would
16 you be supervising, were you over?
17 A. I would estimate twenty-two to
18 twenty-four, somewhere like that,
19 depending on who is quitting. It's about
20 twenty-two or twenty-four.
21 Q. They are all shuttle drivers?
22 A. No, no. I think we had six
23 shuttle drivers in Pensacola and, I

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<p>1 believe, three or four shuttle drivers in 2 Panama City. I remember Frank and John 3 Cruz were the two main ones in Panama 4 City. 5 Q. And Frank Fischer and John 6 Cruz were running back and forth between 7 Panama City and Calera? 8 A. Yes, sir. 9 Q. Four times a week or something 10 like that? 11 A. Yes. 12 Q. And you became district 13 transportation supervisor. Is that when 14 you took over supervisory positions over 15 Frank Fischer? 16 A. Yes, sir. 17 Q. And, again, that was when? 18 A. 2003, July of 2003. 19 Q. Prior to July of 2003 when you 20 took that position, who was the supervisor 21 over Frank Fischer immediately before you? 22 A. Denita Dunagan. 23 Q. Denita Dunagan?</p>	<p>1 Q. Milton? 2 A. Yes, sir. 3 Q. As part of your duties as the 4 DTS, did you have to perform evaluations 5 on employees? 6 A. Written evaluations, no. I 7 had not done any, no, sir. 8 Q. Who did perform written 9 evaluations on shuttle drivers during the 10 time that you were the district 11 transportation supervisor, if you know? 12 A. I would have to talk to HR. 13 THE WITNESS: Did we do -- 14 MR. UMBACH: You just answer 15 his question as best you can. If you 16 don't know, tell him. 17 A. I don't remember having to do 18 any at all. 19 Q. You didn't yourself? 20 A. No, sir. We did Hall of Fames 21 on the drivers where we -- let me rephrase 22 that. We had to do the Hall of Fame once 23 a year where we did evaluate the driver's</p>
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<p>1 A. Yes. 2 Q. And she had held the post of 3 district transportation supervisor? 4 A. Yes, sir. 5 Q. Why did she leave that 6 position, or why was it given to you, do 7 you know? 8 A. She stepped down. 9 Q. Do you know why she stepped 10 down? 11 A. Her son was getting ready to 12 go into high school and she was wanting to 13 be around more with him. 14 Q. So she is no longer employed 15 with Sysco at all? 16 A. She still works for Sysco 17 Calera. 18 Q. Do you know what she does at 19 Sysco Calera now? 20 A. Shuttle driver. 21 Q. Working out of Panama City? 22 A. Working out of Milton, 23 Florida.</p>	<p>1 performance and it's based off four 2 quarters, I remember, and we would turn 3 that in to find out who our Hall of Fame 4 drivers were. 5 Q. Tell me about the Hall of Fame 6 drivers. What was that about? 7 A. It's a program that corporate 8 has to recognize your top drivers at each 9 house. And once they get recognized, I 10 think their names are forwarded to 11 corporate or they win awards or something 12 like that. I don't know the full extent 13 of the program, but I would have all the 14 drivers' names and have to do an 15 evaluation on that part, yes, I would. 16 Q. Was, to your recollection, 17 Frank Fischer recognized in the Hall of 18 Fame? 19 A. No. 20 Q. What does it take to be 21 recognized as a Hall of Fame driver? 22 A. It's broken down in different 23 criterias. I think one is appearance --</p>

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1 not appearance, performance, productivity,
2 safety. And I can't remember all of them,
3 but you have different blocks that you
4 would have to evaluate them on.

5 Q. Was one driver selected from
6 each area? For instance, was one driver
7 selected from the Panama City yard, one
8 driver selected from the Pensacola yard,
9 or can you tell me about that?

10 A. No. I would turn all mine
11 into Birmingham and the supervisors up
12 there would put them all in one package
13 and then find out who the top five drivers
14 were out of the whole company.

15 Q. When you say Birmingham, is
16 that synonymous with Calera?

17 A. Yeah, Calera. Sorry.

18 Q. That is fine. Prior to June
19 of 2004 when this accident happened --

20 A. Yes, sir.

21 Q. -- can you describe, per your
22 recollection, the performance of Frank
23 Fischer as a shuttle driver?

1 And was I concerned for safety,
2 yeah, we worked very -- we enforce safety
3 pretty much in everything we did because
4 they were driving at night and they had
5 deer that would run out on 231 and that
6 kind of stuff, so --

7 Q. Did you ever have any problem
8 with safety about Frank Fischer?

9 A. I would -- safety is one of
10 the things I always come down to the yards
11 and checked on. And when he would be
12 hooking up in the yard in Panama City, you
13 are always supposed to wear your seat
14 belt. And it's an orange-colored belt, so
15 you could see it, and I would look and say
16 Frank, put your seat belt on. And he
17 would say I've got it on. It was always
18 under his arm is one of the things that I
19 would catch him doing quite a bit.

20 Q. When you say quite a bit, how
21 often do you mean when you say quite a
22 bit?

23 A. I would go to the Panama City

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1 MR. MIDDLEMAS: Object to the
2 form of the question. You can answer.

3 A. Positively, he got the job
4 done. Negatively, he would do things
5 that would make other drivers upset.

6 Q. Tell me what you are talking
7 about when you say he would do things to
8 make other drivers upset.

9 A. Basically how he would drop
10 his trailers in the yard where he would --
11 if you understand a tractor trailer, you
12 have your land legs. He would just crank
13 them down where they barely touched the
14 ground, pull off and leave the trailer.
15 So it would drop it down, so the next
16 driver comes and can't get underneath it,
17 so he would have to crank up this heavy
18 trailer, and I would get calls on that and
19 have to remind Frank that hey, you need to
20 jack your trailer up, just being -- but
21 other than that, he did what he had to do.
22 He came to work on time. They got the
23 trailers where they needed to go.

1 yard at least two or three times a month.
2 And I was always there in the evening when
3 they were hooking up, so it was something
4 I noticed -- I would tell him about three
5 or four times maybe. I can't tell you
6 over the period of time, say hey, Frank,
7 this is a reminder that you have got to
8 wear it right.

9 Q. When you say you would go to
10 the Panama City yard, when you had this
11 position of district transportation
12 supervisor, where were you actually based
13 every day?

14 A. In Pensacola.

15 Q. Pensacola?

16 A. Yes, sir.

17 Q. Was there anybody else that
18 oversaw the Panama City yard besides you
19 that was there on site every day that was
20 underneath you perhaps?

21 A. I used David Bailey as my --
22 he didn't have a position as lead man, but
23 he was the senior man over there, so --

FRANK FISCHER
SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.

JOHN MORRIS
November 21, 2006

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1 daytime driver, so I used him a lot of
2 times to help me get things done.
3 Q. David Bailey?
4 A. Yes, sir.
5 Q. Is he still there?
6 A. Yes, he's the district
7 transportation supervisor for that area
8 now out of Geneva.
9 Q. He took your position when you
10 moved up to Geneva; is that right?
11 A. Yes, sir. But he covers --
12 it's spread out more now because we have
13 got a new house.
14 Q. You mentioned the seat belt
15 where you would remind him from time to
16 time to make sure he wore the seat belt?
17 A. Yes, sir.
18 Q. Not under his arm, but across
19 the shoulder. Anything else that you had
20 to remind Frank Fischer about about
21 safety, or were there not any other
22 things?
23 A. Not him overall. We would

1 driver needed to be reprimanded for some
2 reason --
3 A. Yes, sir.
4 Q. -- would you handle that for
5 the drivers working out of the Panama City
6 yard?
7 A. Yes, sir.
8 Q. At any time prior to June of
9 2004, did you have to reprimand Frank
10 Fischer about any violation of any safety
11 policy or any other rule that Sysco had?
12 A. I can't remember.
13 MR. MIDDLEMAS: Object to the
14 form.
15 A. I have done a lot of
16 discipline -- we call it disciplinary
17 action forms. And I don't know if I have
18 written any up on Frank. I have done a
19 lot of them on a lot of drivers.
20 Q. Disciplinary action forms is
21 what you call them?
22 A. I believe that is the name
23 they use or employee disciplinary forms.

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1 constantly remind the drivers as far as
2 DOT that you should take a break your
3 first two hours, you should stop somewhere
4 and take a break and show that on your
5 Tripmaster. So if you have a problem, you
6 know, DOT got back that you have shown on
7 the Tripmaster that you did stop. And if
8 you got sleepy, to stop. And we weren't
9 pushing anybody.
10 Q. What is Tripmaster?
11 A. It's a program that we have in
12 the trucks, a computer program that they
13 log on the truck. It counts your hours,
14 how fast you are driving, your braking,
15 where you stop. Because we had GPS in the
16 trucks, so we could tell where drivers
17 stopped by GPS and it helped us for the
18 day drivers because every customer that we
19 stopped at, it would show it in there, and
20 all they had to do is log how many cases
21 of stuff they delivered.
22 Q. Okay. So during your time as
23 district transportation supervisor, if a

1 Q. I know you can't remember
2 specifically, but what sort of things
3 would you write a driver up for or write a
4 disciplinary action form up on a driver?
5 A. A lot of ours were over hours
6 driving, forgetting to log off the
7 Tripmaster so it would show that they
8 worked -- they were only allowed to work
9 at that time 14 hours. And then you could
10 work sixteen hours a week, and some
11 drivers would forget to log off and go
12 over sixteen hours.
13 And we had somebody at Calera
14 that managed this program every day, so
15 that is a violation. They would be nonDOT
16 compliant. So we would have to remind
17 them, hey, you are supposed to log off the
18 truck, remember to log on, those kind of
19 things I would get a lot drivers on.
20 Or we have a set speed limit
21 for our company, so the Tripmaster tells
22 you how fast you are driving. If we had
23 anybody -- I think it's 62, then I would,

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1 of course, write them up.

2 Everything is documented that I
3 talk to, verbal counseling about over
4 speed.

5 Q. Do you have any recollection
6 of ever citing or giving a disciplinary
7 action form to Frank Fischer for speeding?

8 A. Not that I can recall.

9 Q. Was he ever cited for driving
10 under the influence of either alcohol or
11 narcotics?

12 A. Not that I know of.

13 Q. Did you have random drug
14 testing at Sysco during the time that you
15 were there?

16 A. I didn't run that program, but
17 we did have a program. That is done by HR
18 and safety.

19 Q. Do you know how often they
20 were tested, the shuttle drivers?

21 A. It was random and names would
22 come up. I would get an e-mail have these
23 drivers go down and take a drug test and

1 I know we weren't in any way trying to get
2 rid of anybody.

3 MR. UMBACH: Let him ask you
4 the question. If he wants to know, he'll
5 ask you.

6 Q. At any time while you held the
7 position of district transportation
8 supervisor, did you have to fire a shuttle
9 driver for any reason?

10 A. Not that I can recall.

11 Q. Can you recall at any time
12 while you held the DTS position any
13 shuttle drivers that you supervised having
14 major accidents, defining major accidents
15 the way Sysco defines major accidents?

16 A. Yes.

17 Q. Other than Frank Fischer's
18 accident, can you tell me what other
19 accidents there were that were defined as
20 major?

21 A. A driver, I don't recall his
22 name, he was going northbound on 65 and
23 dropped both trailers on the road on 65.

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1 make sure it was done that day. It was a
2 program that I ran and I had to make sure
3 it got done and told them.

4 Q. To your knowledge, did Frank
5 Fischer ever have a positive drug screen
6 or drug test?

7 A. I know if he did, he wouldn't
8 be working for Sysco because they would
9 automatically get fired.

10 Q. Before Frank Fischer's
11 accident that we are here about now in
12 June of 2004, did you ever have any
13 conversations with him about retirement
14 possibilities?

15 A. No.

16 Q. Did anyone at Sysco discuss
17 with you the need to talk to Frank Fischer
18 about retirement?

19 A. No. I would like to add one
20 thing. This was during the summer, which
21 is our peak season and it's very hard to
22 hire drivers. It's very hard to hire
23 shuttle drivers who will work at night, so

1 Q. When you say dropped the
2 trailers, what does that mean?

3 A. The trailers just came off the
4 fifth wheel and landed on the freeway.

5 Q. Do you know why that happened?

6 A. I can assume.

7 Q. What is your assumption?

8 A. He didn't check the fifth
9 wheel, the king pin lock.

10 Q. Can you explain to me what the
11 king pin lock is?

12 A. On your fifth wheel, the
13 trailers have a king pin, the back of the
14 tractors have a fifth wheel. The king pin
15 goes in the fifth wheel and it's a bar
16 that goes across the back and you are
17 supposed to visually go back there and
18 check it. And what this particular driver
19 did, he high centered where he had the
20 trailer a little too high and sat on top
21 of it, he thought it was locked and he
22 went down the freeway and it just kind of
23 came off the trailer, came off the fifth

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1 wheel.
2 Q. Was anybody injured in the
3 accident?
4 A. No.
5 Q. What happened to that driver
6 in terms of discipline?
7 A. He was not my driver. And
8 since I was not in Birmingham, I did not
9 know the result of the Accident Review
10 Committee. I just know he was fired, or
11 he was no longer working for Sysco.
12 Q. You don't know if he was fired
13 for that incident?
14 A. I knew he had an incident and
15 I knew he was gone.
16 Q. Do you know any other details
17 about that accident, the name of the
18 driver or anything?
19 A. No, sir, I can't remember.
20 Q. Any other major accidents that
21 occurred during your term as DTS?
22 A. We had a driver that ran off
23 the road going north. He ran off the road

1 that conversation. What did he tell you?
2 A. It was early in the morning.
3 He said John, I just -- I believe he said
4 I just had an accident. I said -- I
5 believe I asked him was anybody hurt and
6 he says no. And I said what happened, and
7 he said I don't know, I think I fell
8 asleep. And I said okay, let me call you
9 back. So then I started calling all my
10 upper management and let them know what
11 was going on.
12 Q. When you say you called the
13 upper management --
14 A. Yes, sir.
15 Q. -- who do you call?
16 A. I first notified the
17 warehouse, which I believe was Craig
18 Gottscaker, that was on duty that night.
19 Q. I'm sorry, Craig?
20 A. Gottscaker.
21 MR. UMBACH: Gottscaker.
22 A. Gottscaker.
23 MR. UMBACH: G-O-T --

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1 and the tractor hit a culvert and came to
2 a stop.
3 Q. Was that one of the drivers
4 you supervised?
5 A. No. It was a Northern driver,
6 driver from up North.
7 Q. Do you know any other details
8 about what happened to that driver in
9 terms of discipline?
10 A. He no longer works for Sysco.
11 Q. To your recollection, did any
12 of the drivers during the time that you
13 held the DTS position have accidents and
14 those drivers were not fired?
15 A. No.
16 Q. Okay. Can you tell me how you
17 first learned that Frank Fischer had had
18 his accident in June of 2004?
19 A. He called me right after it
20 happened.
21 Q. Where did he call you?
22 A. At my house.
23 Q. Tell me what you recall about

1 A. G-O-T-T-S-C-A-K-E-R.
2 Q. Okay.
3 A. And told him that we just had
4 an accident. Actually, I asked Frank
5 whose trailers he had because we knew we
6 had to rebuild them out so we can get the
7 groceries delivered. So I let them
8 know -- I informed him that a shuttle
9 driver had a crash, we needed to get the
10 trailers rebuilt. Then I called Danny
11 Harpst, who was the transportation
12 manager.
13 Q. He's the transportation
14 manager. Where is he based?
15 A. Calera.
16 Q. Where is Gottscaker based?
17 A. Calera.
18 Q. Okay.
19 A. Then I called Margie Self.
20 Q. Margie Self?
21 A. Yes. She was safety at the
22 time.
23 Q. Based in Calera?

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<p>1 A. Yes.</p> <p>2 Q. Can you tell me when you</p> <p>3 called these people what you told them?</p> <p>4 What was your conversation with them?</p> <p>5 A. That our shuttle driver just</p> <p>6 had a major accident, no injuries, a</p> <p>7 single-vehicle accident, ran off the road.</p> <p>8 I didn't know the details. I told Danny</p> <p>9 about it and that we were getting the</p> <p>10 trailers rebuilt out and we needed to make</p> <p>11 sure that -- priority is to get the</p> <p>12 trailers down to Panama City where he was</p> <p>13 heading and also make sure that Frank was</p> <p>14 okay. And he said that the police was on</p> <p>15 the way and that kind of stuff.</p> <p>16 I also called Bo Brown, who is</p> <p>17 safety. And I think Danny went out to the</p> <p>18 accident site. In fact, I know he did.</p> <p>19 Q. So you made all these calls</p> <p>20 right after Frank Fischer had called you</p> <p>21 and told you sometime very early in the</p> <p>22 morning?</p> <p>23 A. Yes, sir.</p>	<p>1 ambulance was taking Frank to the</p> <p>2 hospital. And they had called a tow truck</p> <p>3 to pull the trailer out and all that</p> <p>4 stuff.</p> <p>5 Q. Okay. And did you talk the</p> <p>6 next morning when you -- what time did you</p> <p>7 go to work?</p> <p>8 A. They brought two trailers down</p> <p>9 and I helped deliver those routes. So I</p> <p>10 ended up working that day to make sure the</p> <p>11 customers got what they needed.</p> <p>12 Q. In the position of DTS, do you</p> <p>13 still make those deliveries like that?</p> <p>14 A. Whenever needed. You do what</p> <p>15 you have got to do.</p> <p>16 Q. When was the next time you</p> <p>17 talked to Frank Fischer, if you can</p> <p>18 recall?</p> <p>19 A. I believe I saw him in the</p> <p>20 yard. Because I was working out of Panama</p> <p>21 City and he showed up in the yard that</p> <p>22 evening to pick up his vehicle.</p> <p>23 Q. The evening after that --</p>
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<p>1 Q. On June the 29th, I believe?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. What is the next</p> <p>4 conversation you had about Frank Fischer's</p> <p>5 accident, and with whom did you have that</p> <p>6 conversation?</p> <p>7 A. Can you rephrase that</p> <p>8 question?</p> <p>9 Q. Yeah. You said you called</p> <p>10 these four people that you think you</p> <p>11 called at least right after Frank Fischer</p> <p>12 had told you about the accident, Craig</p> <p>13 Gottscaker, Margie Self and Bo Brown?</p> <p>14 A. Yes.</p> <p>15 Q. Who was the next person you</p> <p>16 talked to about the accident --</p> <p>17 A. I called Frank back to get his</p> <p>18 status, what was going on. And he said</p> <p>19 the ambulance came, the police was there.</p> <p>20 I told him that Danny Harpst and, I</p> <p>21 believe, Bo Brown were, I believe, on the</p> <p>22 way there. And after that, then Danny</p> <p>23 Harpst and I talked and said that the</p>	<p>1 well, I guess, the same evening?</p> <p>2 A. Same day, yes, sir.</p> <p>3 Q. The accident happened early in</p> <p>4 the morning that day. You saw him in the</p> <p>5 yard to pick up his personal vehicle?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did y'all discuss the accident</p> <p>8 again then?</p> <p>9 A. I think I more discussed how</p> <p>10 he was feeling, how he was doing, his</p> <p>11 injuries and that kind of stuff.</p> <p>12 Q. Was there any discussion about</p> <p>13 a need to report it specifically for</p> <p>14 worker's compensation purposes or anything</p> <p>15 like that?</p> <p>16 A. No, that was not my</p> <p>17 department. I didn't handle that.</p> <p>18 Q. Did he discuss with you at all</p> <p>19 or ask you how he could contact or whom he</p> <p>20 needed to contact to make a worker's</p> <p>21 compensation claim?</p> <p>22 A. Not that I recall.</p> <p>23 Q. For the rest of that day, the</p>

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1 same day of the accident, did you have any
2 follow-up conversations with anyone,
3 either the four people that you described
4 already that you talked to, or anyone else
5 about the accident?

6 A. Danny Harpst.

7 Q. What did you and Danny Harpst
8 later talk about that day?

9 A. What he seen at the accident
10 site.

11 Q. Tell me what he told you that
12 he saw.

13 A. That the skid marks -- the
14 brake trailer skid marks happened within
15 an intersection. In other words, the
16 brakes weren't put on until past the
17 intersection where you can see the skid
18 marks going into --

19 Q. What significance did he
20 attach to that? Why was he telling you
21 that?

22 A. Basically when he applied the
23 brakes on the truck.

1 A. I can't recall.

2 Q. To your recollection, when is
3 the next time you talked to Frank Fischer
4 himself about his accident?

5 A. I can't recall.

6 Q. At some point were you
7 approached by Danny Harpst again after the
8 Tripmaster report was back?

9 A. Yes, sir.

10 Q. How soon after the accident
11 did that report come back, to your
12 knowledge?

13 A. The very next day.

14 Q. So y'all had another
15 discussion?

16 A. Yes, sir.

17 Q. Tell me about that discussion.
18 What did Danny Harpst say to you and what
19 did you say to him?

20 A. It showed that the truck was
21 traveling at 55 miles an hour. I'm
22 estimating the speed. I think it was 55.
23 He was doing the speed limit. We were

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1 Q. And after he told you that,
2 did he follow it up with saying that Frank
3 Fischer did something wrong or this showed
4 that Frank Fischer did something wrong?

5 A. We were waiting for the
6 Tripmaster report to come out of the
7 computer, which would tell us how fast he
8 was going and if there was any -- if it
9 showed the truck slowing down at all and
10 when the brakes were applied.

11 Q. In that conversation you had
12 with Danny Harpst that day when he told
13 you about the skid marks, did he discuss
14 with you then whether or not Frank Fischer
15 might need to be fired for this offense?

16 A. No, sir.

17 Q. Is that the only person you
18 talked to, to your knowledge, about
19 Frank's accident that day?

20 A. Yes, sir, that I recall, yes,
21 sir.

22 Q. What is the next time and whom
23 did you talk to about his accident?

1 looking to see if he was speeding. That
2 is the first thing you check. So he
3 wasn't speeding, he was doing the speed
4 limit. But it showed a consistent speed,
5 which told us that the cruise control was
6 on the truck.

7 Q. You say it showed a consistent
8 speed, a consistent speed over what period
9 of time?

10 A. From the time you leave 85 to
11 get on Taylor Road until he comes to 231,
12 that stretch of road there which, I think,
13 is about thirteen miles.

14 Q. You think I-85 -- once you
15 turn onto Taylor Road off of I-85 onto 271
16 until you hit 231, you think is
17 thirteen miles?

18 A. I'm estimating the distance,
19 sir.

20 Q. Is Highway 271, from the point
21 that you get off of I-85, are there some
22 traffic lights that you must go through?

23 A. Yes, sir.

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1 Q. A driver is not able to run
2 cruise control when he has to be at the
3 traffic lights?

4 A. No, sir.

5 Q. Once Danny Harpst told you
6 about the Tripmaster report, did you
7 contact Frank Fisher to talk about what
8 the findings were?

9 A. No, sir. I don't recall
10 talking to Frank Fischer.

11 Q. Did anyone else talk to you
12 about the Tripmaster findings?

13 A. No.

14 Q. What is, to your recollection,
15 the next conversation you had with Frank
16 Fischer about anything?

17 A. I can't recall. We had phone
18 conversations between the accident to when
19 the day he was terminated. I can't
20 remember if we ever did. I think I
21 remember calling him saying that you need
22 to be at the office the day we were going
23 to terminate him, we needed to see him.

1 to before the date of the firing about
2 Frank Fischer's employment situation,
3 anybody you talked to before that date,
4 discussed with them whether or not he was
5 going to be fired?

6 A. That is not done by me.

7 Q. Well, did it come as a
8 surprise to you -- did it surprise you as
9 much as it surprised Frank on the date he
10 was fired?

11 MR. UMBACH: Object to the
12 form.

13 Q. Or did you have any knowledge
14 that he was going to be fired?

15 A. After -- when I was told that
16 we were going to meet with him, they told
17 me what they were going to do.

18 Q. Are you familiar with
19 something they call the Accident Review
20 Committee?

21 A. Yes, sir.

22 Q. What is the Accident Review
23 Committee?

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1 Q. At any point before he was
2 actually fired --

3 A. Yes, sir.

4 Q. -- did you have any discussion
5 with him that this accident may result in
6 his termination?

7 A. No, sir. That was not my job.

8 Q. To your knowledge, did anyone
9 have any conversation with him before the
10 actual date he was fired, telling him that
11 this may result in his termination?

12 A. No, sir.

13 Q. Did you have a conversation
14 with Frank Fischer before the date of the
15 firing about what the doctor said he
16 needed to be done to him or whether he was
17 going to need to have surgery?

18 A. I can't recall.

19 Q. Do you have any recollection
20 of learning that Frank Fischer was going
21 to need surgery for this shoulder injury?

22 A. I can't remember at all.

23 Q. Okay. Who else did you talk

1 A. Once you do your investigation
2 of the accident, Bo Brown would get five
3 drivers that are peers, drivers like the
4 driver, and they would get together and
5 decide -- they would be given the facts of
6 the accident, photos or whatever, and the
7 drivers would decide if the accident was
8 either minor, major or serious -- or
9 minor, serious or major. Minor being the
10 least, serious being the middle, and major
11 being the worst.

12 Q. And, again, Bo Brown's
13 position was what in the company?

14 A. Safety.

15 Q. Head of safety?

16 A. Head of safety, yes.

17 Q. Did Frank Fischer's case go to
18 the Accident Review Committee, to your
19 knowledge?

20 A. Since I didn't work out of
21 Calera, I wasn't part of that, but that
22 was normal procedure.

23 Q. Do you know when it went to

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1 the Accident Review Committee in terms of
2 how long after the accident happened?
3 A. No, sir.
4 Q. Do you remember the date that
5 you had the meeting with Frank Fischer to
6 tell him that he was terminated?
7 A. I believe it was in July.
8 Q. Who contacted you to say that
9 we were going to have this meeting?
10 A. Danny Harpst.
11 Q. What did he tell you when he
12 contacted you?
13 A. He told me to get ahold of
14 Frank to tell him that we needed to meet
15 him. He was coming down and we needed to
16 meet with Frank on the findings of the
17 accident he had.
18 Q. Did he tell you -- you said a
19 minute ago that you knew what they were
20 going to do when they were going to have
21 this meeting. Did Danny Harpst tell you
22 what the decision had been?
23 A. I asked him what the decision

1 A. At the time we signed it.
2 Q. There is a date down here that
3 says July 27th, 2004.
4 A. Okay.
5 Q. The memorandum is dated
6 July 23rd, 2004. I mean, is it your
7 understanding that the meeting with Frank
8 Fischer was on July 27th?
9 A. The day we signed it, yes,
10 sir.
11 Q. To your knowledge, was it sent
12 to Frank Fischer on the date it was
13 written, on July the 23rd?
14 A. I don't know, sir.
15 Q. Who all was present -- let me
16 back up. Where was this meeting held?
17 A. Panama City shuttle location.
18 Q. In a particular room or
19 building?
20 A. We have a trailer that we use
21 for an office.
22 Q. By the way, where is the yard
23 in Panama City?

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1 was and he said they were going to
2 terminate him.
3 Q. Did you have any reaction to
4 that?
5 A. Yes.
6 Q. What was that?
7 A. I was a little bit upset.
8 Q. Why were you upset?
9 A. Because it was during our peak
10 season more or less, losing a shuttle
11 driver and having to regroup and get
12 somebody to hire. That is all basically.
13 Q. Did anyone ever ask your
14 opinion about whether or not he should be
15 fired for this --
16 A. No, sir.
17 Q. -- accident? I'm going to
18 show you what has been marked previously
19 Defendant's Exhibit 13. Can you tell me
20 if you have seen that document before?
21 A. Yes, sir.
22 Q. Okay. When were you shown
23 that document for the first time?

1 A. It's in Lynn Haven, Florida.
2 Q. Where in Lynn Haven?
3 A. Off of 25th Street, I believe,
4 25th or 26th Street.
5 Q. Who were all the persons in
6 the room when this meeting happened?
7 A. Danny Harpst, myself, and
8 Frank Fischer came in and, I believe,
9 brought his sister. He asked if his
10 sister could be in present and we said
11 yeah, she could.
12 Q. Was there any other person
13 there, a salesman associated with Sysco or
14 anything like that?
15 A. No, sir.
16 Q. When Frank Fischer arrived
17 with his sister, what was said? Who
18 started talking and what was said?
19 A. Danny Harpst did all the
20 talking and basically went through the
21 memo and told him the findings of the memo
22 and what the outcome of the memo was
23 through upper management and what was to

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1 happen.
2 Q. Do you know who the members
3 were who served on the Accident Review
4 Committee during this time?
5 A. No, sir.
6 Q. Do you know if Danny Harpst
7 was a member of the Accident Review
8 Committee?
9 A. Accident Review Committee were
10 all -- by the book, was all peers.
11 Q. Other shuttle drivers, in
12 other words?
13 A. Yes, sir, any of the drivers.
14 Q. You don't know who served on
15 that Committee at this time, who
16 investigated this accident?
17 A. (Witness shakes head.)
18 Q. You don't know when they met
19 after this accident?
20 A. No, sir.
21 Q. Do you know who would know
22 when the Accident Review Committee met?
23 Would Danny Harpst know?

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1 A. No. It was -- Bo works for HR
2 department.
3 Q. Do you know the procedure that
4 is followed once the Accident Review
5 Committee makes a recommendation? Is the
6 decision of the Accident Review Committee
7 binding or is it simply a recommendation
8 that whoever makes the final decision can
9 either follow the recommendation or not
10 follow it?
11 A. I can't answer that.
12 Q. Bo Brown was head of safety.
13 Do you know if the ultimate decision on
14 whether or not to fire somebody for an
15 accident on the job laid with him?
16 A. No, sir.
17 Q. Do you know if there was a
18 particular person at Sysco that would make
19 the final decision about whether someone
20 would be fired because of an accident that
21 occurred on the job?
22 A. Just said upper management, so
23 I never knew who would do that.

1 Q. Okay. Did anybody ever from
2 the Safety Review Committee, I think, is
3 what -- Accident Review Committee or
4 anyone else, Bo Brown or anyone, ever ask
5 your opinion about the seriousness of the
6 accident that Frank Fischer had?
7 A. No. That wasn't my job.
8 Q. Did anyone ever ask you about
9 what kind of employee Frank Fischer was
10 generally when they were making their
11 decision about whether to terminate him or
12 not?
13 A. No, sir.
14 Q. If I have asked this before, I
15 apologize. Let me make sure I understand.
16 During this meeting, the reasons given by
17 Danny Harpst for his firing, did you say
18 he simply read from the memo?
19 A. Yes, sir.
20 Q. Do you remember what the
21 response from Frank Fischer was?
22 A. He was upset.
23 Q. When you say he was upset, do

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1 you remember what he said?
2 A. He said he was not going to
3 sign it and that was it. And basically,
4 it was -- it was very few words said, very
5 few. He got his stuff out of the box and
6 I said I need your keys and that was it.
7 Q. What did you say about getting
8 his stuff?
9 A. He had a little cubby hole
10 where they kept their books and stuff like
11 that, a shelf where they kept their stuff,
12 personal gear.
13 Q. Did you clear that out for
14 him?
15 A. Yeah, it was right there.
16 It's in that little trailer, so he was
17 able to get it.
18 Q. Did you get it for him or did
19 he?
20 A. I can't recall.
21 Q. At any time during the entire
22 time you worked for Sysco Calera, can you
23 recall any other driver being terminated

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<p>1 after an on-the-job accident?</p> <p>2 MR. UMBACH: I'm sorry, can</p> <p>3 you ask that again?</p> <p>4 Q. Anytime during you have been</p> <p>5 employed with Sysco Calera, do you recall</p> <p>6 a driver that was terminated following an</p> <p>7 on-the-job accident?</p> <p>8 MR. UMBACH: Other than what</p> <p>9 he's already testified about?</p> <p>10 MR. MIDDLEMAS: Right, but I'm</p> <p>11 not certain I have asked it like that. If</p> <p>12 I'm being repetitive, I apologize, but if</p> <p>13 you can just --</p> <p>14 MR. UMBACH: Let me object to</p> <p>15 the form.</p> <p>16 Q. Go ahead and answer that.</p> <p>17 A. Just the ones that we</p> <p>18 mentioned earlier.</p> <p>19 Q. In the meeting with you and</p> <p>20 Danny Harpst when this memorandum was</p> <p>21 presented to Frank Fischer, was there any</p> <p>22 discussion about him falling asleep or did</p> <p>23 he deny falling asleep, or do you have any</p>	<p>1 again?</p> <p>2 A. No, sir.</p> <p>3 Q. Did you ever speak with Danny</p> <p>4 Harpst about it again?</p> <p>5 A. About Frank again?</p> <p>6 Q. Yes.</p> <p>7 A. No, sir.</p> <p>8 Q. Other than either attorneys</p> <p>9 representing Sysco or someone associated</p> <p>10 with risk management, have you since this</p> <p>11 meeting had any conversation with anyone</p> <p>12 about the firing of Frank Fischer?</p> <p>13 A. No, sir.</p> <p>14 Q. I'm going to show you,</p> <p>15 Mr. Morris, what is marked as Defendant's</p> <p>16 Exhibit 1. I think it's entitled Driver's</p> <p>17 Report of Accident.</p> <p>18 I believe that Frank Fischer</p> <p>19 has testified that he did, in fact, sign</p> <p>20 this and fill this out. And under brief</p> <p>21 description of accident, it says came to</p> <p>22 intersection sooner than expected, hit</p> <p>23 brakes and went into ditch.</p>
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<p>1 recollection about that?</p> <p>2 A. That was not discussed in</p> <p>3 there because -- what was discussed is</p> <p>4 what is in here (indicating).</p> <p>5 Q. Did Danny Harpst review the</p> <p>6 company policies and the rules that he</p> <p>7 claims Frank violated?</p> <p>8 MR. UMBACH: Object to the</p> <p>9 form.</p> <p>10 Q. I'm sorry, you can go ahead</p> <p>11 and answer.</p> <p>12 A. During this discussion?</p> <p>13 Q. Yes. Did he go over the</p> <p>14 rules? There are rules cited in the</p> <p>15 second paragraph that he says were</p> <p>16 violated. Did he go through those rules</p> <p>17 with Frank Fischer?</p> <p>18 A. I can't recall.</p> <p>19 Q. At any time after this</p> <p>20 termination, did you have any conversation</p> <p>21 with Frank Fischer about this meeting?</p> <p>22 A. No, sir.</p> <p>23 Q. Did he ever try to contact you</p>	<p>1 Is that your recollection of</p> <p>2 how Frank Fischer described to you how</p> <p>3 this accident happened?</p> <p>4 A. No, sir.</p> <p>5 Q. Can you tell me again how it</p> <p>6 differed from that?</p> <p>7 A. I said what happened, and he</p> <p>8 says I think I fell asleep.</p> <p>9 Q. Do you remember the day of the</p> <p>10 week this was this happened on?</p> <p>11 A. No, sir.</p> <p>12 Q. Do you remember if whether or</p> <p>13 not this was his regularly scheduled</p> <p>14 workday or if you had asked him to work on</p> <p>15 his off day?</p> <p>16 A. They didn't really have off</p> <p>17 days. They were available five days a</p> <p>18 week. Their off days were Saturday and</p> <p>19 Sunday. If they had an off day during the</p> <p>20 middle of the week, it's because we didn't</p> <p>21 need them.</p> <p>22 Q. They had no set off day?</p> <p>23 A. Saturday and Sunday.</p>

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1 Q. Other than the Saturday and
2 Sunday, they had no set off days?
3 A. No, sir.
4 Q. Were there at times that Sysco
5 was shorthanded for drivers?
6 A. Yes, sir.
7 Q. Would that require the
8 existing drivers to work longer hours
9 during the week than they ordinarily
10 would?
11 A. They could only work within
12 DOT standards.
13 Q. And what were the DOT
14 standards again?
15 A. If I recall, they couldn't
16 work more than sixteen hours in one day,
17 one shift per week, fourteen hours per
18 shift, and they couldn't work more than
19 seventy hours a week.
20 Q. At any time while you were
21 employed there with Sysco Calera, were
22 there instances where drivers would drive
23 over their limit?

1 In Calera, they had a microwave
2 system that read it. It was automatic.
3 When they pull in the yard, it would
4 download the truck. But the driver had to
5 put that information in the computer to
6 extract information from the computer.
7 The very next morning somebody
8 would come in and read it, and the driver
9 is responsible to make sure that he's DOT
10 compliant in everything he does.
11 Q. You have listed some people
12 that might have some knowledge about this
13 accident and also the subsequent
14 termination, Craig Gottscaker, Danny
15 Harpst, Margie Self and Bo Brown.
16 To your knowledge, are there
17 any other persons that have knowledge
18 about the accident and the subsequent
19 termination?
20 A. Smoky Parker, who was the
21 director of transportation, was also that
22 night, I believe, or he was called by
23 Danny. He's part of chain of command.

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1 A. They couldn't.
2 Q. When you say they couldn't,
3 could you explain that?
4 A. If they reached their limit,
5 they were told to park the trucks and we
6 would come and get them.
7 Q. Was Sysco tracking them to see
8 if they were working over their limit?
9 A. Yes, sir.
10 Q. Did Sysco track all of its
11 trucks?
12 A. Yes, sir.
13 Q. For instance, would someone be
14 aware that Frank had wrecked his truck
15 when it happened before he ever made a
16 call to you?
17 A. The way we track our trucks
18 was through Tripmaster program. The very
19 next day, they would have had a card and
20 when you finish your route, you would
21 download that card -- this is in the
22 shuttle yard -- and then they would -- the
23 card would go through a machine.

1 Q. Smoky Parker?
2 A. Yes, sir.
3 Q. He was?
4 A. Director of transportation.
5 Q. What does the director of
6 transportation position entail?
7 A. Overall responsibility of
8 transportation operations.
9 Q. Where was he based?
10 A. In Calera.
11 Q. So you didn't talk to him that
12 night, or did you talk to him that night?
13 A. Either I called him or Danny
14 called him, but one of us called him as
15 part of the chain of command.
16 Q. At any time after the night of
17 the accident, did you have a conversation
18 with Smoky Parker about the accident?
19 A. No, sir.
20 Q. At any point after the
21 accident, did you or anyone else, to your
22 knowledge, claim that Frank Fischer was
23 not wearing his seat belt on the night the

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1 accident occurred?
 2 A. Can you rephrase that?
 3 Q. Yes. Did you, at any point
 4 after this accident happened, tell Frank
 5 Fischer that you thought he was not
 6 wearing his seat belt when this accident
 7 happened?
 8 A. He had a nugget on his head
 9 where he had hit the windshield.
 10 Q. Did he tell you he hit the
 11 windshield?
 12 A. Yes, sir.
 13 Q. Anyway, go on. I'm sorry.
 14 A. And I cannot recall if I said
 15 well, did you have the seat belt
 16 underneath your arm like you always do. I
 17 know that came up in conversation, but I
 18 can't really remember. But I know he had
 19 a goose egg on his forehead where he had
 20 hit the windshield.
 21 Q. Was he cut at all on his
 22 forehead, to your knowledge?
 23 A. He had a ball cap on.

1 Q. And this is when now?
 2 A. A couple of days after the
 3 tractor finally arrived at Calera.
 4 Sometime in the month of when the accident
 5 happened.
 6 Q. June 29th, I believe.
 7 A. Sometime in July.
 8 Q. You mean the tractor was towed
 9 back to the Calera yard?
 10 A. Yes, sir.
 11 Q. Did Danny Harpst call you
 12 after it had been towed back; is that what
 13 happened?
 14 A. No. I would go up there for
 15 meetings.
 16 Q. Oh, you would?
 17 A. Yes.
 18 Q. You discussed this with him on
 19 one of the times you went up there for a
 20 meeting, or did you go up there
 21 specifically to talk about Frank Fischer's
 22 case?
 23 A. No. I went up for a meeting

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1 Q. How did you know he had a ball
 2 cap on?
 3 A. I saw him after he had the
 4 accident. I was still in the yard after
 5 delivery. And when he came to get his
 6 vehicle, I talked to him about his
 7 injuries and he said he had hit the
 8 windshield with his head.
 9 Q. Is that when you asked him
 10 about the seat belt, you think?
 11 A. I might have made a comment to
 12 him.
 13 Q. Did anybody else talk to you
 14 about the issue of whether Frank Fischer
 15 was wearing his seat belt when the
 16 accident happened?
 17 A. Danny Harpst and I talked
 18 about it.
 19 Q. When did y'all talk about it?
 20 A. When the truck was in the
 21 yard, towed back to the yard, we went out
 22 to the yard to look at the tractor and saw
 23 where the windshield had been broken out.

1 and we went out and looked at the truck.
 2 I was looking for the Tripmaster cards and
 3 Frank asked me to get his toolbox that he
 4 had left in the truck.
 5 Q. And when you and Danny Harpst
 6 went out there to look at the tractor,
 7 what did Danny Harpst say?
 8 A. It was me. I looked at the
 9 tractor. I got in the driver's seat and
 10 saw where the windshield -- he had hit his
 11 head on the windshield and it had a little
 12 bit of hair particles. And I think at the
 13 time I said well, no way you are going to
 14 hit your windshield -- this happened not
 15 probably wearing your safety belts.
 16 Q. Why would you say that? And
 17 what I mean is, was there already
 18 discussion about whether or not this is
 19 going to be an accident that resulted in
 20 termination?
 21 A. No, sir. It was just
 22 conversation.
 23 Q. Was the issue of a seat belt

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1 brought up in the meeting that happened
2 right here on July the 27th?
3 A. No, sir.
4 Q. Did anyone, before Frank
5 Fischer was fired on July the 27th, ever
6 discuss with you the fact that Frank
7 Fischer had made a worker's compensation
8 claim?
9 A. No, sir.
10 Q. Were you aware that he had
11 made a worker's compensation claim?
12 A. No, sir.
13 Q. During this meeting, did Danny
14 Harpst discuss the worker's compensation
15 claim that Frank Fischer had made?
16 A. No. He only discussed what
17 was within that paragraph.
18 Q. Well, as you see, there is a
19 PS written down there that gives the name
20 of a worker's compensation adjuster or
21 agent or something like that.
22 A. Yes, sir.
23 Q. Was that discussed?

1 Q. Did anybody ever discuss that
2 fact with you, that he was one of the most
3 senior persons driving?
4 MR. UMBACH: Object to the
5 form.
6 A. Pertaining to what?
7 Q. To anything. And what I mean
8 is, was there ever any discussion, either
9 before this accident happened or after,
10 where anyone affiliated with Sysco
11 discussed with you that Frank Fischer was
12 the most senior driver they had?
13 MR. UMBACH: Object to the
14 form.
15 A. No, sir.
16 Q. In the chain of command at
17 Sysco when you held the position of
18 district transportation supervisor, who
19 was your immediate supervisor?
20 A. Smoky Parker.
21 Q. At any time prior to this
22 accident on June 29, 2004, did you and
23 Smoky Parker have any discussion about any

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1 A. I can't recall.
2 Q. Other than when you were
3 looking at the tractor with Danny Harpst
4 up in Calera and you discussed the fact
5 that you thought perhaps the seat belt
6 wasn't on right because he hit his head
7 like that, was there ever any other
8 discussion that you had with anyone about
9 the seat belt?
10 A. No, sir.
11 Q. And I asked a question similar
12 to this earlier, I just want to make sure
13 I'm completely clear about it.
14 To your recollection, was Frank
15 Fischer, before the date of 6/29/04, ever
16 cited for a safety violation while driving
17 for Sysco?
18 A. No, sir.
19 Q. Do you know how long he had
20 worked for Sysco at the time he had this
21 accident?
22 A. He was one of the most senior
23 men, twenty plus years with the company.

1 problems with Frank Fischer as an
2 employee?
3 A. No, sir.
4 Q. After the accident happened,
5 you have described the conversation with
6 Danny Harpst. Did you have any
7 conversation with Smoky Parker about a
8 seat belt or anything to do with the
9 accident Frank Fischer had?
10 A. No, sir.
11 Q. Is that unusual? And what I
12 mean is, you are the supervisor of
13 Fischer?
14 A. Yes, sir.
15 Q. Parker is your supervisor?
16 A. Yes, sir.
17 Q. This was listed as a major
18 accident. Why would you not discuss it
19 with Parker?
20 A. The only responsibility I had
21 was to turn in my report, which I typed up
22 and turned in the very next day. Then
23 they took that information, the report I

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1 did, and that was my input.

2 Q. Can you show me the report or
3 maybe the report is in that exhibit.

4 MR. MIDDLEMAS: Has it already
5 been --

6 MR. UMBACH: I'll give it to
7 you.

8 MR. MIDDLEMAS: Has it already
9 been entered as an exhibit?

10 MR. UMBACH: I don't know. I
11 don't think so.

12 (Reviewing documents.)

13 MR. MIDDLEMAS: Give me just a
14 moment to look through this real quick.

15 (Reviewing document.)

16 (Whereupon, Plaintiff's
17 Exhibit 1 was marked for
18 identification.)

19 Q. So, Mr. Morris, this is the
20 Supervisor Incident Report that you just
21 cited in your testimony; is that right?

22 A. Yes. This is the one I
23 printed up and faxed. I sent it by

1 And you said during our conversation, John
2 made the comment he called Frank on the
3 two-way early that morning and warned him
4 about the construction barriers at the end
5 of Highway 271 before you approach 231.

6 Why did John Cruz tell you
7 that, to your recollection?

8 A. John Cruz and Frank ran
9 together a lot of times.

10 Q. What do you mean ran together?

11 A. They would take -- behind each
12 other. Like going down the road when you
13 see a convoy of two Sysco trucks.

14 Q. Okay.

15 A. And John and Frank -- well,
16 John would check on Frank throughout the
17 night and make sure he was okay.

18 Q. They weren't running together
19 on this night?

20 A. No, sir. John was ahead of
21 Frank and just let him know -- they would
22 call deer are out, it's foggy, whatever,
23 just talking to each other.

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1 e-mail, attached to an e-mail.

2 Q. When was this created?

3 A. The very next day.

4 Q. And I notice in here that you
5 write I asked where are you and what
6 happened. Frank said he was southbound on
7 Highway 271 and ran off the
8 intersection -- ran off the road at the
9 intersection of Highway 271 and Highway
10 231. And I asked how did that happen, and
11 Frank said uh, I don't know, maybe I fell
12 asleep.

13 I want to make sure I
14 understand your testimony. You don't
15 remember Frank Fischer saying definitively
16 that he fell asleep, do you?

17 A. I'm saying what is right
18 there. That was right after the accident
19 when he called me.

20 Q. It also cites down here in the
21 investigation summary portion that you
22 received a phone call from John Cruz
23 asking about Frank Fischer's condition.

1 Q. And it says down here I asked
2 John where was Frank when he talked to him
3 and John replied southbound on I-65. Why
4 did you put that in your report? Why was
5 that important enough to put in your
6 report?

7 A. I can't recall. Just
8 documenting everything that happened, all
9 the conversations, what was going on and
10 everything that happened.

11 Q. And right up here where it
12 says what do you think caused this
13 incident, root cause? And if stuck, ask
14 if you were in the exact same situation
15 right now, what would you do different?
16 Did you respond to that, or is there a
17 response to that? I'm not sure I follow
18 that exactly.

19 A. (Reviewing document.) That is
20 usually what you would do after you find
21 out the results of the Accident Review
22 Committee. And I didn't know -- it says
23 action taken, Accident Review Committee,

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1 because I didn't know what the cause of
2 the accident was at the time.
3 Q. Right here, there is the
4 choice of is further investigation of this
5 incident necessary, and you checked yes or
6 marked yes?

7 A. Yes, sir.

8 Q. How is it determined whether
9 further investigation of this incident is
10 necessary, and does that decision lie with
11 you?

12 A. If I am the first person to go
13 up, let's say, a driver had a small
14 accident, say, he bumped into something, a
15 hole, no damage done; well, of course, no
16 further investigation.

17 But in this case, the accident
18 running off the road and damage, we didn't
19 know if the tractor had problems, in other
20 words, we have to look at mechanically if
21 something happened, we didn't know.

22 This is where you have like a
23 minor, minor accident that you have a bump

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1 in the yard or something like that. Those
2 things happen all the time.

3 Q. Before July the 27th, 2004
4 when he actually was terminated, did you
5 have any expectation or any opinion as to
6 what should happen to Frank Fischer?

7 A. No, sir.

8 Q. Did you want to keep him on as
9 an employee?

10 A. Yes, sir.

11 MR. MIDDLEMAS: Can you give
12 me just a couple of minutes to look
13 through some stuff, and I don't have much
14 more?

15 MR. UMBACH: Sure.

16 (Short break taken.)

17 MR. MIDDLEMAS: Okay. We are
18 back on.

19 Q. (BY MR. MIDDLEMAS:) At any
20 time, not in preparation for this
21 deposition, but at any other time, did you
22 discuss the Fischer accident with Lynda
23 Wheat?

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1 A. No, sir.

2 Q. Did you ever discuss with
3 Lynda Wheat the termination of Frank
4 Fischer?

5 A. No, sir.

6 Q. We talked a minute ago about
7 how many years Frank Fischer had worked
8 for the company. Was he, to your
9 knowledge, the most senior driver driving
10 for Sysco at that time?

11 MR. UMBACH: Object to the
12 form. You can answer.

13 A. Yearswise?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. And, to your knowledge, the
17 person closest to him in terms of number
18 of years of driving, how many years had
19 they been driving for the company?

20 A. I think we had some up to
21 fifteen years. I'm only guessing. I know
22 we had some at minimum, between ten and
23 twenty.

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1 (Whereupon, Plaintiff's
2 Exhibit 2 was marked for
3 identification.)

4 Q. I'm going to show you what I
5 am going to mark as Plaintiff's Exhibit 2,
6 which was just a document provided to me
7 by the lawyers for Sysco in discovery.
8 And this, I believe, says Driver
9 Evaluation Form. Do you know, does this
10 appear to be an evaluation of Frank
11 Fischer?

12 A. Yes, sir.

13 Q. It's got here, instructor.
14 Can you tell me that name right now?

15 A. Judd Brogden.

16 Q. Who is Judd Brogden?

17 A. He was the lead safety
18 director for Sysco Calera.

19 Q. I mean, is that prior to Bo
20 Brown, or am I getting the positions mixed
21 up here?

22 A. Bo worked for Judd.

23 Q. Does he still hold that

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November 21, 2006

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1 position?

2 A. Judd is no longer with Sysco.

3 Q. Do you know where he is now?

4 A. No, sir.

5 Q. When did he leave Sysco, to
6 your knowledge?

7 A. I don't know, sir.

8 Q. When this evaluation was done,
9 did he contact you and ask you questions
10 about Frank Fischer's performance?

11 A. No, sir.

12 (Whereupon, Plaintiff's
13 Exhibit 3 was marked for
14 identification.)

15 Q. I'm going to mark this as
16 Plaintiff's Exhibit 3, which, again, is
17 another document I received from Sysco's
18 attorneys. It says a Certificate of
19 Completion Presented to Frank Fischer,
20 Three Dimensions of Safe Driving Large
21 Vehicle. Are you familiar with this
22 document? Have you ever seen it before?
23 A. No, sir.

1 in every Sysco house.

2 And once a year, we have a
3 forty-hour safety meeting where everybody
4 has -- not forty hours -- four-hour safety
5 meeting and everybody has to attend. I
6 believe we did Three Dimensions of Safe
7 Driving Large Vehicles in this meeting.

8 Q. Okay.

9 MR. UMBACH: I want the record
10 to be clear that you were just testifying
11 about Plaintiff's Exhibit 2.

12 MR. MIDDLEMAS: Right.

13 MR. UMBACH: When you were
14 talking about the Smith System, you were
15 referring to Plaintiff's Exhibit 2?

16 THE WITNESS: Yes, sir.

17 Q. (BY MR. MIDDLEMAS:) All
18 right. And you say you teach this course
19 now, so do you fill out these evaluation
20 forms now?

21 A. Yes, sir. And as you know,
22 it's not in the van -- it's not from
23 tractor trailers. It's safe driving that

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1 Q. Then when they state
2 certificate of completion for this three
3 dimensions of safe driving large vehicle,
4 do you even know what that is in reference
5 to?

6 A. No, sir.

7 Q. You don't know if that was a
8 prerequisite to continue driving as a
9 shuttle driver for Sysco or not?

10 A. These are safety programs that
11 we have. I teach this class here now and
12 this is the Smith System, which is the
13 five points of defensive driving we teach
14 all the drivers. And it's the techniques
15 of driving. It's not really driving
16 tractor trailers. It's techniques for
17 safety that we want them to use when they
18 are driving, whether it be in their
19 privately-owned vehicle or in a tractor
20 trailer. It's five steps. We want you to
21 aim high, keep your eyes moving, leave
22 yourself an out and make sure they see
23 you. And Sysco overall does this program

1 we want them to use these techniques. And
2 when they are driving tractor trailers,
3 aim high in steering, saying look
4 15 seconds ahead down the road. Where are
5 you going to be 15 seconds from now,
6 getting the big picture, keeping your eyes
7 moving 360 degrees around your vehicle,
8 keep your eyes moving. We want them to
9 move their eyes every 5 to 8 seconds,
10 checking the mirrors, checking around you,
11 being alert.

12 Leave yourself an out is if you
13 are driving down the road and you get
14 closed in, how are you going to get out to
15 avoid an accident, and make sure they see
16 you at intersections when you come up on
17 intersections. Like you and I get eye
18 contact, that is what it is all about, and
19 we teach all our drivers this, it's
20 supposed to be every two years.

21 Q. Did you ever evaluate Frank
22 Fischer?

23 A. I was not an instructor at

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1 that time.
2 Q. Okay. And, again, you have
3 never had to cite Frank Fischer for any
4 safety violations, to your recollection,
5 while you were at Sysco?
6 MR. UMBACH: Object to the
7 form.
8 Q. While he was at Sysco?
9 MR. UMBACH: Other than what
10 he has already testified about?
11 MR. MIDDLEMAS: Correct.
12 A. Just wearing his seat belt.
13 Q. On the seat belts, was there
14 anything that was ever written up?
15 A. No, sir. It was verbal.
16 Q. Was Judd Brogden still at
17 Sysco at the time of Frank Fischer's
18 accident in June of 2004, to your
19 knowledge?
20 A. No, sir. Margie Self took his
21 place.
22 Q. The meeting on July the 27th
23 when Frank Fischer was fired where you

1 the company?
2 A. Yes, sir.
3 MR. UMBACH: Okay. That is
4 all I've got.
5 MR. MIDDLEMAS: Let me ask one
6 follow-up about that.
7
8 REEXAMINATION BY MR. MIDDLEMAS:
9 Q. In terms of age, was he the
10 oldest driver that you had at Sysco during
11 the time that he was there and that you
12 had the position of DTS?
13 A. I can't recall. I don't know
14 how old Frank is.
15 Q. He's in his 50s.
16 A. Okay.
17 Q. Do you know if there were
18 other drivers that were that age or older
19 at the time that you were over them as
20 supervisor?
21 A. In our yard down there?
22 Q. Yes.
23 A. No.

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1 were present and Danny Harpst was present,
2 you have testified that Danny Harpst went
3 through the language that was in the memo?
4 A. Yes, sir.
5 Q. Was there any other discussion
6 about what would occur with health
7 insurance benefits or any other benefits
8 that were available to Frank Fischer as an
9 employee?
10 A. I can't recall.
11 MR. MIDDLEMAS: I don't have
12 anything else.
13 MR. UMBACH: One quick
14 question.
15
16 EXAMINATION BY MR. UMBACH:
17 Q. John, when you said Fischer
18 was the most senior, what did you mean?
19 A. Years of service.
20 Q. Years of service with the
21 company?
22 A. With the company, yes, sir.
23 Q. In other words, seniority with

1 MR. MIDDLEMAS: Okay. That is
2 all I have.
3 MR. SEGREST: No questions.
4 MR. UMBACH: That is all.
5
6 FURTHER THE DEPONENT SAITH NOT
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CERTIFICATE

STATE OF ALABAMA)
JEFFERSON COUNTY)

I hereby certify that the
above and foregoing deposition was taken
down by me in stenotypy, and the questions
and answers thereto were reduced to
typewriting under my supervision, and that
the foregoing represents a true and
correct transcript of the deposition given
by said witness upon said hearing.

I further certify that I am
neither of counsel nor of kin to the
parties to the action, nor am I in anywise
interested in the result of said cause.

COMMISSIONER - NOTARY PUBLIC

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JOHN MORRIS
November 21, 2006

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FRANK FISCHER
SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.

JOHN MORRIS
November 21, 2006

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FRANK FISCHER

SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.

JOHN MORRIS

November 21, 2006

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-cv-00763-DRB
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., et al.,)	
)	
Defendants.)	

AFFIDAVIT OF LYNDA WHEAT

1. My name is Lynda Wheat. My date of birth is September 22, 1952 and I am competent to testify. The matters set forth below are based upon my personal knowledge.

2. I am the Assistant Vice President for Sysco Food Services of Central Alabama, Inc. I have been in charge of Human Resources for Sysco for approximately 8 years.

3. In June 2004, I became aware of the fact that Mr. Frank Fischer had been involved in an accident in a company vehicle. The Accident Review Committee determined that the accident was "major." In every incident where the Committee has declared an accident to be "major," the employee has been terminated. My letter to Fischer's attorney following Fischer's termination and

before his appeal, along with some corresponding attachments, is attached as Exhibit A.

4. I am familiar with the individuals who investigated Mr. Fischer's accident: Bo Brown, whose date of birth is October 15, 1946, Margie Self, whose date of birth is September 1, 1957, and Danny Harpst, whose date of birth is February 16, 1962. Mr. Fischer's supervisors at the time of his termination were John Morris, whose date of birth is July 21, 1960, and Mike Bullard, whose date of birth is October 4, 1955.

5. Sysco allows a terminated employee to appeal the decision of termination. Mr. Fischer appealed his termination. The transcripts of the appeals process for Mr. Fischer, including his final hearing held on October 6, 2004, are attached as Exhibits B and C.

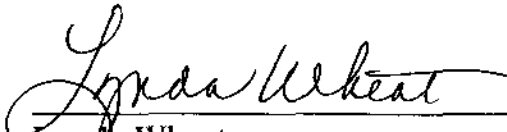
6. The purpose of the appeals hearing is for the employee to bring to the attention of the appeals panel any new information not known at the time of termination that would justify the employee being rehired. Mr. Fischer was represented by counsel at the appeals hearing.

7. I served as a member of Mr. Fischer's appeals panel, along with Danny Ralph, Executive Vice President, whose date of birth is November 17, 1956 and Chris O'Keefe, Vice President of Merchandising, whose date of birth is May 1, 1959.

8. The appeals panel unanimously decided not to reinstate Mr. Fischer's after his hearing. I voted not to overturn the termination decision because of Mr. Fischer's statement to his immediate supervisor that he may have fallen asleep, the accident report of the investigating officer which indicates that Mr. Fischer went to sleep, the accident caused major property damage and placed the company at a huge liability risk, and the termination decision was consistent with previous major accident decisions. The memorandum detailing my decision to deny the appeal is attached as Exhibit D. The memoranda detailing the decisions of Mr. Ralph and Mr. O'Keefe are attached as Exhibits E and F.

9. In January 2005, I received notice from the EEOC that Mr. Fischer had filed an age discrimination charge against Sysco. The form from the EEOC, dated January 24, 2005 and attached as Exhibit G, stated that no action was required by Sysco at that time. I later received another form from the EEOC, dated March 29, 2005 and attached as Exhibit H, which indicated that the EEOC was dismissing Mr. Fischer's charge for failure to cooperate. The EEOC never requested that Sysco respond to Mr. Fischer's charge in the form of a position statement or otherwise.

10. The above information is true and correct to the best of my knowledge.


Lynda Wheat

STATE OF ALABAMA)

Shelby COUNTY)

Subscribed and sworn to before me on this the 26 day of
January, 2007.


Notary Public

My commission expires: _____

NOTARY PUBLIC
STATE OF ALABAMA
MY COMMISSION EXPIRES
MAY 15, 2009

[SEAL]

EXHIBIT A



SYSCO Food Services of Central Alabama

September 8, 2004

Clifford C. Higby
Bryant & Higby, Chartered
Attorneys at Law
833 Harrison Avenue
P. O. Box 860
Panama City, Florida 32402-0860

RE: *Appeal of Frank Fischer*

Dear Mr. Higby:

Thank you for your letter of August 23, 2004. In response to your request, enclosed are the documents relating to Mr. Fischer's accident and the decision to terminate his employment. You will notice from these documents that Mr. Fischer's accident was reviewed by the Accident Review Committee. A copy of the Accident Review Policy explaining the makeup of the Committee and the role of the Committee is enclosed. The Committee, made up of Sysco drivers, determined that Mr. Fischer's accident was "major." All accidents that have been determined "major" by the Accident Review Committee have resulted in the termination of the driver involved. Documentation relating to the two other drivers involved in "major" accidents is enclosed.

Sysco appreciates Mr. Fischer's length of service and good driving record prior to this accident. Those factors were considered in the termination decision, but, in the minds of those involved, did not outweigh the determination of the Accident Review Committee and the seriousness of Mr. Fischer's accident. We regret the timing of Mr. Fischer's termination in relation to his surgery.

We look forward to hearing Mr. Fischer's appeal and stand ready to reverse the decision to terminate his employment should the information provided warrant such action. Please let me know whether you would be available to reconvene the Appeals Panel on Thursday, September 9th, 3:00 p.m. via telephone. Our attorney, Trip Umbach, plans to be present for the hearing. I look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Lynda Wheat'.

Lynda Wheat
Asst. Vice President, Human Resources

cc: Arnold W. Umbach III
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203

**Fischer v. Sysco
Sys 0299**

AUG-30-2004 16:10

CO CENTRAL AL

P.15/17

Accident Review Committee Meeting

Transportation

02/13/03

Marcus George
Calera
01/15/03

Driver did not latch trailer side door correctly. Trailer door swung open and hit and busted back window on van.
The committee stated that the driver should always verify that trailer doors are locked correctly before driving. **Decision - Serious Accident***

Jeremy Cleckley
Fresh Express
01/23/03

Driver backed into awning cross bar while making a delivery.
The awning was only a month old and the bent cross bar had to be replaced.
The committee, after looking at the pictures, noticed that the driver would have hit the garbage dumpster under the awning if he hadn't hit the cross bar first. They also stated that looking at the pictures showed that the driver had a long dock and plenty of room to deliver. There was no reason for the driver to back into that area and hit the awning. **Decision - Serious Accident...Written Warning**

Mark Edwards
Panhandle
02/03/03

Driver was closing trailer door and did not have his hand out of the way.
The driver smashed his finger.
The committee stated that the driver should have known, as many times as he closes the trailer doors, to remove his hand from under the opening. **Decision - Minor Accident...Decision based on carelessness, not on actual injury to finger. Documented Verbal Warning**

Rusty Pody
Calera
02/04/03

Driver stopped at a gas station to get some refreshments. Upon leaving the area, the driver was traveling through a fuel island and struck a dumpster with the front right fender/head light of the tractor. The fiberglass was broken/cracked and so was the head light and head light assembly.
The committee looked at the pictures and stated that the driver just did not look in front of him or he would have seen the dumpster. They also stated that the driver had plenty of clearance in the area and should have been able to miss the dumpster. **Decision - Serious Accident...Written Warning**

Marcus George
Calera
02/05/03

Driver, going through alley, hit an illegally parked car in the alley with the back corner of trailer. The passenger side mirror was broken/knocked off parked vehicle.
The committee stated that the vehicle was illegally parked, but the driver should have taken the time to get out and look before proceeding. **Decision - Minor Accident***

AUG 30 2004 4:47 PM

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Sys 0617

AUG-30-2004 16:09

CO CENTRAL AL

P.13/17

Chris Guarino
Calera
02/05/03

Driver states that he was delivering in a tight parking lot with cars in the way. The driver was attempting to miss cars and did not recognize that trailer was too close to the building. The trailer hit and knocked off three letters of the store sign.
Some of the committee members had delivered to the same location and stated that there was not enough room to deliver. Decision - Minor Accident...Documented Verbal Warning

Billy Peppers
North Alabama
02/10/03

Driver left the Calera yard pulling doubles. The driver hit a bump in the road going over bridge. The front trailer was not properly locked to the fifth wheel, and the trailers released. The trailers skidded down the road and came to rest on the guard rail on the side of the road.

The committee stated that looking at the pictures they could see that the trailer was not attached to the fifth wheel. They decided that the weight of the trailer must have kept the trailer attached to the tractor until the driver hit a bump in the road causing the trailer to bounce off the fifth wheel.

The committee was given the opportunity to go and look at the tractor, but a few members stated that they already had and the pictures reflected that the king pin was not properly attached to the fifth wheel. The committee stated that the driver did not do a through pre-trip or he would have noticed the problem. The committee asked that the fifth wheel be tested at this point to verify that a trailer would properly attach. If so, the committee stated that the accident was Major. Decision - Major Accident...Management Decision

* Driver resigned.

AUG 30 2004 4:47 PM

PAGE. 13

Sys 0618

AUG-30-2004 16:09

CO CENTRAL AL

P.14/17

Monday, Feb. 17, 2003

I William A. Peppers do hereby Resign
my position as shuttle driver from Sysco
Foods services at Central Alabama effective
immediately

William A. Peppers

AUG 30 2004 4:47 PM

PAGE.14

Sys 0619

AUG-30-2004 16:10

CO CENTRAL AL

P.16/17

Accident Review Committee Meeting Transportation 07/24/03

David Hadley
Calera
07/14/03

Driver stated that he was entering his truck using a three point stance and his foot slipped. The driver stated that he held on but his elbow banged into the truck. The driver sustained a concussion to his right elbow. The committee stated that fortunately the driver was hanging on and didn't fall. Decision - Minor Accident - Documented Verbal Warning

Justin Smith
North Alabama
07/22/03

Driver stated that he thought he hit something in the road causing the left front tire of the tractor to blow out. The truck pulled to the left and driver left the roadway and traveled in a ditch approximately 500 feet. The driver was able to keep the tractor and two trailers being pulled from turning over. The driver ended up hitting a culvert/concrete drainage pipe under a driveway in the ditch. This ultimately stopped the truck. The driver stated that he did not want to hit his brakes for fear of losing the load.

The committee reviewed the pictures and also went out and looked at the tractor. Some of the statements that the committee stated:

- They did not think that the tractor would have traveled that far with a flat tire.
- The tire/inside of rim should have been full of mud if the tire blew on the roadway before entering the ditch.
- It was hard for them to believe that the driver would not have touched the brakes...human instinct. They stated that he should have used light steady braking.
- If the tire blew, because of the 100 pounds of pressure, the air would have been gone immediately causing the tire to come off the rim.
- They stated that he could have fallen asleep although he had just been out of the truck eating breakfast and that it depended on how much sleep he got the day before. No one could answer that question.
- The driver's story just did not add up to them.

The committee also stated that they felt the tire was punctured when the tire and rim hit the concrete drainage pipe. The committee was unable to make a definite decision as to severity. The decision made was as follows.

Todd Harris - Major Accident
Nelson Self - Major Accident
Bobby Dudley - Serious Accident
Shane Harris - Serious Accident if he had to make a decision but would rather it be left up to management.
Jeff White - Could not make a decision at all. He stated that it should be a management decision.

AUG 30 2004 4:47 PM

PAGE.16

Sys 0620

AUG-30-2004 16:18

CD CENTRAL AL

P.17/17

TRANSPORTATION

To: Justin Smith *File*
From: Smokey Parker
Date: July 28, 2003
Subject: Termination

Justin, on Tuesday morning at approximately 3:00 A.M. you were involved in a one vehicle accident that caused major damage to our two (2) trailers, one (1) dolly and one (1) tractor. Upon further investigation into the accident you were found to be speeding and you admitted to Bo Brown that you had set your cruise control to 62 MPH in a 55 MPH zone. Your employment at Sysco Food Services is hereby immediately terminated. Attached is the appeal board procedure.

Acknowledgement of Memorandum

Date

Refused to sign.
JP

AUG 30 2004 4:47 PM

TOTAL P.17
PAGE.17

Sys 0621

***** -COMM. JOURNAL- ***** DATE OCT-06-2004 ***** TIME 15:58 *** P.01

MODE - MEMORY TRANSMISSION

START-OCT-06 15:57

END-OCT-06 15:58

FILE NO. - 137

STN NO.	COMM	ABR NO.	STATION NAME/TEL NO.	PAGES	DURATION
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***** (DF-1100 (0.14)** -1100 (NRDU0.14- ***** -014 0006

- ** (NRDU)**

*To: Cliff
Hughes*

**Accident Review Committee Meeting
Transportation Department**

July 13, 2004

Chris Paris
Penhandle
6/18/04



Driver stated that he was driving on country club drive when he struck an overhanging tree limb and bent the smoke stack. Committee stated that all the rain that we have had the tree limb could have been hanging lower. Decision - Minor. First Minor-Verbal Warning.

Shawn Bell
Penhandle
7/6/04

Driver stated that he was backing up at the customers and hit the passenger side taillight on a pick up truck. Committee stated that he should have been watching his surroundings more carefully when backing up. Decision - Minor. Second Minor in 12 months -Written Warning. Was employee instructed to use cones when previous backing accident occurred per Transportation Policy? If so, additional disciplinary action is warranted for failure to use cones when backing.

Chris Guarino
Caliara
6/23/04

Driver stated that he was pulling away from a red light the car next to him came over into him and his wheel tore the chrome off the car front fender. Committee stated that looking at the picture you don't know what really happened. They said the driver should have taken better pictures. Decision - Minor. Second Minor in 12 months -Written Warning.

Frank Fletcher
Penhandle
6/29/04

X

Driver stated that he was heading back to Panama City with two loaded trailers when he came up on the intersection sooner than expected. He hit his brakes and went into the ditch. Committee stated that the driver was careless and not paying attention what was going on. Decision - Major. Turned over to management per policy for decision.

Fischer v. Sysco
Sys 0304

EXHIBIT B

AUG-27-2004 13:31

SYSCO CENTRAL AL

P.04/09

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APPEAL HEARING
FOR
WILLIAM FRANK FISCHER

AUGUST 13, 2004
1:00 P.M.

VIA TELEPHONE:
MS. LINDA WHEAT
SYSCO, INC.
100 SYSCO DRIVE
CALERA, ALABAMA 35040

*Panama Court Reporting Service, Inc.
637 E. 4th Street
Panama City, Florida 32401
Phone 850-769-4971 Fax 850-914-9800*

ORIGINAL

004

BRYANT & HIGBY, CHARTERED

08/23/04 14:48 FAX 850 785 1533

Fischer v. Sysco
Sys 0524

AUG-27-2004 13:31

SYSCO CENTRAL AL

P.05/09

2

1 MR. HIGBY: This is Cliff Higby.

2 MS. WHEAT: William Frank Fisher, please?

3 MR. HIGBY: Yeah, right. Frank is right
4 here with me.

5 MR. FISCHER: I'm talking to you.

6 MR. HIGBY: Can you hear Frank?

7 MR. FISCHER: Hello?

8 MS. WHEAT: Hi, it's Linda.

9 MR. HIGBY: Mrs. Wheat, this is Clifford
10 Higby, I'm Mr. Fisher's lawyer and I'm here
11 with him, okay.

12 MS. WHEAT: I'm aware who you are, sir.

13 MR. HIGBY: Okay.

14 MS. WHEAT: Frank, are you there?

15 MR. HIGBY: I'm here, and as well you
16 should know we have a court reporter here,
17 okay?

18 MS. WHEAT: Fine. Frank, are you there?

19 MR. FISCHER: Yes.

20 MS. WHEAT: All right. What this meeting
21 is for is for you to give your justification of
22 why you should be -- why you should keep your
23 job.

24 MR. HIGBY: Okay. Mrs. Wheat, this is
25 Cliff Higby again, and I wrote you all a couple

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BRYANT & HIGBY, CHARTERED

08/23/04 14:49 FAX 850 785 1533

AUG-27-2004 13:31

SYSCO CENTRAL AL

P.06/09

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1 of weeks ago and told you that Mr. Fisher would
2 be appealing his termination and it's my
3 understanding that this is Sysco's version of
4 the appeal hearing, is that right?

5 MS. WHEAT: Frank, I'm here to talk with
6 you. If you would like to appeal please tell
7 us your justification for your appeal, please?

8 MR. HIGBY: Mrs. Wheat, this is Mr. Higby
9 again. On Mr. Fisher's behalf, I want to say
10 that we do not have any written notice for, and
11 as his counsel, which I think he has the right
12 to have counsel here, I don't have any notice
13 as to any specific provision or reason that Mr.
14 Fisher was terminated other than the fact that
15 he has had an accident and filed a worker's
16 compensation claim. Can you tell me why he was
17 fired, please?

18 MS. WHEAT: He did not file for his appeal
19 in the proper manner, so if we want this appeal
20 to go forward I will talk with Mr. Fisher.

21 MR. HIGBY: Well, again, I just want the
22 record to be clear, you're objecting to Mr.
23 Fisher having his lawyer present at this
24 proceeding?

25 MS. WHEAT: I'm not objecting to him

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BRYANT & HIGBY, CHARTERED

08/23/04 14:49 FAX 850 785 1533

AUG-27-2004 13:31

SYSCO CENTRAL AL

P.07/09

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1 having his lawyer present. Mr. Fisher did not
2 file for his appeal the way he was supposed to.
3 We are giving him his appeal.

4 MR. HIGBY: How was he supposed to file
5 for his appeal and we can refile it and do it
6 the way you want us to.

7 MS. WHEAT: It's too late to do that, sir.
8 We are going to hear his appeal, but we are
9 speaking only with Mr. Fisher.

10 MR. HIGBY: Well, ma'am, I've got, I will
11 be asking Mr. Fisher questions in order to, to
12 create a record and testimony which will
13 validate his appeal. But my question to you
14 before we get started, again, is what and why
15 was Mr. Fisher fired and then we'll know what
16 we should be appealing.

17 MS. WHEAT: This appeal hearing is not
18 going on. It was not filed properly, we gave
19 him a chance, he did not do it properly. I am
20 not going to talk to an attorney today, I am
21 talking to Mr. Fisher. Good day gentlemen.

22 MR. HIGBY: Cathy, just let the record
23 reflect that that was Linda Wheat of Sysco that
24 called in. She would not tell us why the quote
25 "appeal" was improperly filed. I want the

1007

BRYANT & HIGBY, CHARTERED

08/23/04 14:48 FAX 850 785 1533

AUG-27-2004 13:32

SYSCO CENTRAL AL

P.08/09

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1 record to also reflect that, and I think what
2 I'll do is just attach a copy of my letter to
3 this transcript. I wrote a letter on behalf of
4 Mr. Fischer which constituted written notice to
5 Sysco that he would like to appeal his
6 termination from the company, and Mrs. Wheat
7 would not tell us why or how that appeal was
8 quote "improper". And with that that's all we
9 need to say.

10 NOTHING FURTHER
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BRYANT & HIGBY, CHARTERED

08/23/04 14:48 FAX 850 785 1533

AUG-27-2004 13:32

SYSCO CENTRAL AL

P.09/09

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF BAY

4 I, Catherine A. Aldea, Court Reporter and Notary
5 Public in and for the State of Florida at Large.6 DO HEREBY CERTIFY that the foregoing proceeding
7 was heard before me at the time and place therein
8 designated, that the hearing was taken down by machine
9 shorthand and tape recorded, and thereafter reduced to
10 typewriting by me, and the transcript pages numbered 1
11 through 5 are a true and correct record of the aforesaid
12 proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 relative or employee of such attorney or counsel, or
16 financially interested in the foregoing action.17 WITNESS MY HAND AND SEAL THIS 23rd day of AUGUST,
18 2004, IN THE CITY OF PANAMA CITY, COUNTY OF BAY, STATE OF
19 FLORIDA.20
21 
22 Catherine A. Aldea
23
24
25

TOTAL P.09

Fischer v. Sysco
Sys 0529

EXHIBIT C

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APPEAL HEARING
FOR
MR. WILLIAM FRANK FISCHER.

OCTOBER 6, 2004
3:00 P.M.

FOR SYSCO, VIA TELEPHONE:	FOR EMPLOYEE:
TRIP UMBACH, ESQ.	CLIFF HIGBY, ESQ.
SYSCO, INC.	BRYANT & HIGBY, CHARTERED
1000 SYSCO DRIVE	833 HARRISON AVENUE
P. O. BOX 1750	PANAMA CITY, FLORIDA 32401
CALERA, ALABAMA 35040	

Panama Court Reporting Service, Inc.
637 E. 4th Street
Panama City, Florida 32401
Phone 850-769-4971 Fax 850-914-9800

COPY

1 MR. UMBACH: This is Trip Umbach.

2 MR. HIGBY: Hi Trip. This is Cliff Higby in
3 Panama City.

4 MR. UMBACH: How are you?

5 MR. HIGBY: I'm fine. I tried to call you
6 earlier. Actually I have been up in your neck of
7 the woods. I was in up in Birmingham and
8 Demopolis yesterday, and this morning, on
9 depositions.

10 MR. UMBACH: And you were able to make it
11 back?

12 MR. HIGBY: Well, I got back about noon
13 today.

14 MR. UMBACH: Okay. Short depositions.

15 MR. HIGBY: Pardon me?

16 MR. UMBACH: Short depositions.

17 MR. HIGBY: Did you want to talk with me at
18 all before we get started on it?

19 MR. UMBACH: I was really calling to confirm
20 it and to kind of talk about the logistics. My
21 thought about this is I don't intend to say much.
22 I'm going to let, really, the others run it and
23 you say what you need to say. But I'm really here
24 because you're here.

25 MR. HIGBY: Okay. Well, let me just say

1 this. I have a court reporter here.

2 MR. UMBACH: All right.

3 MR. HIGBY: Her name is Cathy Aldea, and
4 she's here and she's taking everything down.

5 MR. UMBACH: Are we on the record now?

6 MR. HIGBY: She's taking notes. And we also
7 have Frank Fischer here, the former Sysco
8 employee; and Frank's sister, Marge Loberger is
9 here. Do you have any problem with her being in
10 the room, Trip?

11 MR. UMBACH: No. Give me the name of the
12 court reporter again.

13 COURT REPORTER: My name is Catherine A.
14 Aldea, A L D E A, and my phone number is
15 850-769-4971.

16 MR. UMBACH: Okay, and Mr. Fischer is there?

17 MR. HIGBY: That's right.

18 MR. UMBACH: And his sister?

19 MR. HIGBY: His sister, Marge Loberger.

20 MR. UMBACH: How do you spell that?

21 MS. LOBERGER: L O B E R G E R.

22 MR. UMBACH: Okay.

23 MR. HIGBY: And she's not going to be talking
24 or anything. She's just here because she's got to
25 help take care of Frank after his accident, and

1 what have you. She's not going to be
2 participating. Okay.

3 MR. UMBACH: On our end we've got Lynda
4 Wheat. And let me spell that for the court
5 reporter. L Y N D A, W H E A T; and Chris
6 O'Keefe; and Danny Ralph, R A L P H.

7 Cliff, let me say one other thing. We
8 just faxed you, two minutes ago, a document
9 reflecting the Accident Review Committee's
10 conclusion on this accident. I was looking back
11 at what Linda had sent to you and I noticed, at
12 least I don't think it included the page for
13 Mr. Higby. Did you notice that? I mean, I'm
14 sorry...

15 MR. HIGBY: Is this the July 23rd memorandum
16 from Danny Harps? The one that they asked Frank
17 to sign that they wouldn't sign?

18 MR. UMBACH: No. This is -- yeah, I don't
19 think it was sent to you.

20 MR. HIGBY: Okay, well I'd like to see that
21 before we get started, if I may.

22 MR. UMBACH: Yeah, it says Accident Review
23 Committee Meeting Transportation Department,
24 July 13th, 2004 at the top.

25 MR. HIGBY: Okay.

1 MR. UMBACH: And it was just faxed to you.
2 What number did we fax it to?

3 MR. HIGBY: Let me go see if it's on the fax
4 machine. Sit tight.

5 OFF THE RECORD

6 MR. HIGBY: Trip, are you there?

7 MR. UMBACH: Yes.

8 MR. HIGBY: Okay. This is a -- I got the. I
9 got this one page memorandum. There's several,
10 there's a handful of other incidents on there.

11 MR. UMBACH: Right.

12 MR. HIGBY: And then down at the bottom it
13 says, it talks about Frank's accident. Am I to
14 understand that this Accident Review Committee
15 meeting took place on July 13th?

16 MR. UMBACH: Yes.

17 MR. HIGBY: Okay. Then it says "turned over
18 to management per policy for a decision"

19 MR. UMBACH: That's correct and it should
20 have been sent to you earlier and we just noticed
21 that it wasn't included.

22 MR. HIGBY: Okay. There might have been
23 something in here.

24 MR. UMBACH: Well, we weren't positive we
25 hadn't, but we wanted to make sure you had it.

1 MR. HIGBY: Can you tell me when the
2 management decision was made? Was that
3 July 23rd? Yes, the date of this memorandum on
4 Frank.

5 MR. UMBACH: Probably so.

6 MR. HIGBY: Okay.

7 MR. UMBACH: But you should have everything
8 now. So at this point my thought is to turn it
9 over to the committee.

10 MR. HIGBY: Okay. Well, what I'd like to do
11 is, and the last time we started to do this me and
12 Ms. Wheat were kind of a little bit at odds. She
13 kept saying what's the basis of the appeal, and I
14 said well, I have to confess I don't know why he
15 was fired because, you know, at that point we had
16 not been given any of this memorandum and none of
17 this stuff. And now we have. So I think I can
18 state the basis for the appeal here today.

19 And in sum, the basis for the appeal is
20 that we don't believe Mr. Fischer was grossly
21 negligent or reckless in terms of this accident,
22 number one; and that there's really no other, I
23 mean, there's no legitimate reason for the company
24 to fire Frank. And it seems to me that the only
25 reason he's been fired is that he's filed a

1 Worker's Compensation claim. Now, you may take
2 issue with that and we'll go through, and I want
3 to appeal on the merits of the alleged termination
4 and we want, I want to try to show the committee
5 that Mr. Fischer was not grossly negligent. That
6 he did do things that a reasonable person would do
7 to try to prevent this accident and I'm going to
8 quote to you from the memorandum that was given to
9 Frank, which he did not sign.

10 And then finally I want it to be clear
11 to the committee that while Mr. Fischer has not
12 been released to work yet, he's been a, almost a
13 27 year employee of the company; he had never had
14 so much as a parking ticket; he did not receive
15 any citation or ticket in this accident; and he
16 valued his job with Sysco; and he was Sysco's most
17 senior driver. I don't know if he was the highest
18 paid driver, he may have been. But it just seems
19 to me that this is unwarranted, and we hope that
20 he will be rehired. That you will reconsider the
21 termination and that you'll bring Frank back to
22 work when Dr. Goodwiller, his doctor, allows him
23 to.

24 What I'm going to do is ask Frank some
25 questions. This isn't going to be long, and

1 hopefully this information will be useful to you
2 and you can reconsider and consider this his
3 appeal. Okay.

4 Frank, I'm going to ask you some
5 questions and I want to you speak up so these
6 folks can hear you. Okay?

7 MR. FISCHER: Okay.

8 MR. HIGBY: With respect to this accident on
9 June 29th, did you receive or have you received
10 any traffic citation or ticket from the Alabama
11 Highway Patrol, Montgomery Sheriff's Department,
12 anything like that?

13 MR. FISCHER: I received no ticket.

14 MR. HIGBY: Okay. Did you ever tell the
15 officer that you fell asleep?

16 MR. FISCHER: I do not believe I told him
17 that I fell asleep.

18 MR. HIGBY: Okay. In your 26 plus years with
19 Sysco, had you ever received even a parking ticket
20 while on the job?

21 MR. FISCHER: None.

22 MR. HIGBY: In some of the materials that
23 were provided to us by Sysco there was reference
24 to a conversation with a John Crews. Do you
25 recall that on the day of the accident?

1 MR. FISCHER: Yes, I talked to him on the
2 radio phone. Told him I got out of the warehouse
3 at a decent time and looks like, everything looks
4 like I'm having a good run.

5 MR. HIGBY: Was there anything said about
6 construction barriers on a particular part of
7 y'all's route?

8 MR. FISCHER: No.

9 MR. HIGBY: Were there construction barriers
10 in the area where this accident occurred?

11 MR. FISCHER: No.

12 MR. HIGBY: That had nothing to do with this
13 accident?

14 MR. FISCHER: That had nothing to do with
15 this accident.

16 MR. HIGBY: Just for the committee's benefit
17 I would tell you that in the incident,
18 Supervisor's Incident Review Mr. Morris makes some
19 reference to that fact that Mr. Crews had
20 allegedly warned Frank about certain areas.
21 That's not even the area -- there were no
22 construction barriers in the area where Frank's
23 accident occurred.

24 Mr. Fischer, were you ever given any
25 training materials or any specific training from

1 Sysco regarding driver fatigue or sleepiness?

2 MR. FISCHER: I do not believe so.

3 MR. HIGBY: Do you recall receiving something
4 one week after this accident with your paycheck?

5 MR. FISCHER: Yes.

6 MR. HIGBY: What was that?

7 MR. FISCHER: A paper Entitled "dangers of
8 Driving Sleepy".

9 MR. HIGBY: Had you ever been given that
10 before?

11 MR. FISCHER: I never saw one like that
12 before.

13 MR. HIGBY: Trip, I have a one page
14 memorandum here that came with Frank's paycheck
15 after this accident and I don't know, you all may
16 have one up there. I would certainly be happy to
17 provide you with a copy of this, but basically
18 it's a memo regarding dangers of driving sleepy
19 and certain safety tips and what have you.

20 MR. UMBACH: Do you have a copy of that for
21 the court reporter?

22 MR. HIGBY: I'm going to attach a copy of
23 this to the transcript.

24 MR. UMBACH: All right.

25 MR. HIGBY: And I'll be happy to fax that to

1 everything reasonable to prevent the accident."

2 Can you tell me what you did to prevent this
3 accident?

4 MR. FISCHER: I slammed on the brakes hard.
5 I kept the trailers from jack-knifing. I kept the
6 trailers from tipping over. I did not hit any
7 car. I did not hit any power poles or stop lights
8 or signs in the area.

9 MR. HIGBY: Was the load upright?

10 MR. FISCHER: Yes.

11 MR. HIGBY: You didn't hit any other
12 vehicles?

13 MR. FISCHER: Didn't hit nothing.

14 MR. HIGBY: You didn't hit any street signs
15 or anything like that?

16 MR. FISCHER: Didn't touch them.

17 MR. HIGBY: Okay. It's my understanding that
18 Sysco called you a few times after the accident,
19 and who was this, your supervisor, John Morris?

20 MR. FISCHER: John Morris.

21 MR. HIGBY: He called you to check on you to
22 see how you were doing?

23 MR. FISCHER: Yes.

24 MR. HIGBY: Do you recall speaking with
25 Mr. Morris about the time of your MRI?

1 MR. FISCHER: Yes.

2 MR. HIGBY: What was that conversation?

3 MR. FISCHER: I told him that the tendon had
4 been ripped completely off the bone and that the
5 doctor is going to have to put it back on again.

6 MR. HIGBY: You told him you were going to
7 have to have surgery?

8 MR. FISCHER: Yes.

9 MR. HIGBY: What was his response?

10 MR. FISCHER: He was surprised, he said
11 "you're kidding" that it was that bad.

12 MR. HIGBY: And about when did that
13 conversation take place?

14 MR. FISCHER: Around July 14th.

15 MR. HIGBY: July 14th?

16 MR. FISCHER: Somewhere around there, yes.

17 MR. HIGBY: When was the next time you saw
18 Mr. Morris or talked to him?

19 MR. FISCHER: When I was terminated.

20 MR. HIGBY: The last time you talked with
21 Mr. Morris you told him you were going to have
22 surgery?

23 MR. FISCHER: I believe so.

24 MR. HIGBY: And the next time you saw him he
25 was handing you a piece of paper telling you you

1 were fired?

2 MR. FISCHER: That I had to sign it; yes.

3 MR. HIGBY: Okay. Who was your supervisor
4 prior to Mr. Morris?

5 MR. FISCHER: Denita Donnigan.

6 MR. HIGBY: Do you recall having a
7 conversation with Mrs. Donnigan regarding early
8 retirement?

9 MR. FISCHER: Yes.

10 MR. HIGBY: What did she tell you?

11 MR. FISCHER: She recommended that I consider
12 early retirement.

13 MR. HIGBY: Did she ever tell you why?

14 MR. FISCHER: No, but I just told her that I
15 was shooting for 40 years.

16 MR. HIGBY: You told her you wanted to work
17 for the company for 40 years?

18 MR. FISCHER: Yes.

19 MR. HIGBY: At the time Ms. Donnigan made
20 that statement to you, were you the oldest driver
21 at Sysco?

22 MR. FISCHER: I believe I was.

23 MR. HIGBY: Were you the most senior driver
24 for Sysco?

25 MR. FISCHER: Yes, I believe I was.

1 MR. HIGBY: If and when Doctor Goodwiller
2 returns you to work and says that you're
3 physically able to return to work, would you be
4 willing to go back and drive for Sysco?

5 MR. FISCHER: Yes.

6 MR. HIGBY: Trip. I would just say that I
7 would note one other thing. I didn't see gross
8 negligence defined in the employee handbook and I
9 think in the memorandum that they gave Frank they
10 said he had violated rule ten, and rule ten deals
11 with harassment. I think it might have been
12 referring to rule 11 which is Safety and Health.
13 But in any event Frank was not written up and
14 didn't get a ticket for this accident and it would
15 be our position that he didn't do anything in this
16 accident which qualified as gross negligence or
17 recklessness. At most I think it could be said
18 that he had a momentary lapse where he got up on a
19 intersection a little bit quicker than he thought
20 he was going to. He took evasive action. He
21 applied the brakes, he kept the rig upright. He
22 didn't hurt anybody else. He didn't run into any
23 other vehicles. He didn't destroy any other
24 property, and that would be our position on the
25 committee's finding that he was grossly negligent.

1 And if anybody has any questions for Mr. Fischer,
2 he's here for the asking.

3 MR. UMBACH: Let me ask just one question. I
4 didn't hear part of the answer about. Was it Ms.
5 Donnigan?

6 MR. HIGBY: Denita Donnigan, that's right.

7 MR. UMBACH: All right, and I understand
8 there was a conversation about early retirement?

9 MR. FISCHER: Yes.

10 MR. UMBACH: Did Mr. Fischer say when that
11 conversation took place?

12 MR. FISCHER: I don't know off hand the exact
13 date. Just one of the meetings that, where we all
14 get together and somewhere along the line
15 something would get said about that.

16 MR. HIGBY: She was Mr. Fischer's supervisor
17 prior to John Morris, and I think John Morris had
18 been a supervisor for about a year.

19 MR. FISCHER: At least a year.

20 MR. HIGBY: So that, that's, and Mrs.
21 Donnigan is now driving again for Sysco as I
22 understand it.

23 MR. UMBACH: Okay. And did I understand him
24 to say that this was in a meeting with others
25 present?

1 MR. HIGBY: When did this conversation take
2 place?

3 MR. FISCHER: At a driver's meeting get
4 together, and then I would be asked what do you
5 think about early retirement. If I would consider
6 it. You know, you got 20 years in with the
7 company already so you might want to consider
8 early retirement. I said I was hoping to shoot
9 for 40 years.

10 MR. HIGBY: Were there other people around
11 when that conversation took place, if you
12 remember?

13 MR. FISCHER: I don't remember. It wasn't a
14 private conversation, it was just like right now.
15 Whether anybody paid any attention to it or not, I
16 don't know.

17 MR. HIGBY: So there were other drivers
18 around when this conversation took place?

19 MR. FISCHER: Yes.

20 MR. HIGBY: Did you hear that, Trip?

21 MR. UMBACH: I heard him say yes. Does he
22 recall the names?

23 MR. HIGBY: Do you recall the names?

24 MR. FISCHER: No. It wasn't no private
25 conversation. It was just where she come up, you

1 know, just making, almost like making small talk
2 where you come up to me, Frank, when you going to
3 retire? You got 20 years in. You might want to
4 consider retiring or something like that.
5 Something in that order, not exact, but mention of
6 the early retirement has been brought up.

7 MR. HIGBY: Any other questions for Frank?

8 MR. UMBACH: Did he complain to anyone at
9 Sysco about that statement from Ms. Donnigan?

10 MR. HIGBY: I don't know if there was any
11 reason for him to complain. He was just---

12 MR. FISCHER: I don't have a complaint about
13 it, I just said no thank you. I've got another 15
14 years to go.

15 MR. HIGBY: Anybody else have any questions?

16 MR. UMBACH: No.

17 MR. HIGBY: Okay. That's it.

18 MR. UMBACH: Cliff, are you going to send us
19 a copy of the transcript with that document?

20 MR. HIGBY: Yes. I'll do that. Do you want
21 to split the copy of the transcript with me? You
22 don't have to. I'll pay for it. I'll send that
23 to you, Trip. Where do you want me to send that
24 to you, at your office in Birmingham?

25 MR. UMBACH: Send it to Sysco.

1 MR. HIGBY: Okay.

2 MR. UMBACH: You got that address?

3 MR. HIGBY: Linda Wheat's address. Yes, I
4 do.

5 MR. UMBACH: Send it to Linda Wheat.

6 MR. HIGBY: And again, just on behalf of Mr.
7 Fischer, I mean, you've got a gentleman here who
8 has been employed with the company for 27 years.
9 Never had a accident until this incident, and I'm
10 at a loss as to why the company would want to get
11 rid of an employee such as Mr. Fischer who has
12 such an excellent record.

13 If you look at his -- if you look at his
14 driver review the year before this, he gets
15 excellent marks on everything, and I think it even
16 says something to the affect of "great work!!!"
17 with three exclamation points behind it. What
18 have you.

19 Mr. Fischer would be ready and willing
20 to come back to work as soon as he gets released
21 by Dr. Goodwiller. He's got a good orthopedic
22 surgeon here in Panama City who I think is going
23 to get him well and we hope that the committee
24 will reconsider and bring Mr. Fischer back on
25 board.

1 MR. UMBACH: Thank you, Cliff. And we'd like
2 to wait and review the transcript.

3 MR. HIGBY: That's not a problem.

4 MR. UMBACH: As part of this committee's
5 decision.

6 MR. HIGBY: Be happy for you to do that.

7 MR. UMBACH: All right, so we, in terms of
8 timing we'll wait and get that transcript, and
9 then have a decision after we review it.

10 MR. HIGBY: Okay and just, Trip, if you don't
11 mind, when you make your determination -- I don't
12 know if they will send out a written determination
13 or what you will do, but send it along to me and
14 copy me, whatever.

15 MR. UMBACH: Will do. All right, do you want
16 to go off the record?

17 MR. HIGBY: Yes, we can go off the record.

18 NOTHING FURTHER
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF BAY

I, Catherine A. Aldea, Court Reporter and Notary
Public in and for the State of Florida at Large.

DO HEREBY CERTIFY that the foregoing appeal
hearing was reported by me at the time and place therein
designated. That the hearing was taken down by machine
shorthand and tape recorded, and thereafter reduced to
typewriting by me, and the transcript pages numbered 1
through 20 are a true and correct record of the aforesaid
proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
relative or employee of such attorney or counsel, or
financially interested in the foregoing action.

WITNESS MY HAND AND SEAL THIS 13th day of OCTOBER,
2004, IN THE CITY OF PANAMA CITY, COUNTY OF BAY, STATE OF
FLORIDA.


Catherine A. Aldea


EXHIBIT D



Human Resources

MEMORANDUM

TO: File

FROM: Lynda Wheat 

DATE: October 20, 2004

SUBJECT: Frank Fischer Termination Appeal

The appeal hearing for Frank Fischer was heard on October 6th. The hearing was a telephone appeal hearing with Frank Fischer and his attorney, court reporter, Trip Umbach, attorney, Bradley-Arant (Sysco's attorney) Danny Ralph, EVP, Chris O'Keefe, VP Merchandising, Lynda Wheat, AVP Human Resources.

The appeals hearings are for employees to bring to us any new information that we may not have known at the time of their termination which would justify the employee being re-hired.

Facts:

1. Mr. Fischer is a 5 and ½ year employee of Sysco Central Alabama. Prior to April 1999, Mr. Fischer worked for other Sysco companies.
2. Mr. Fischer has been driving this same route for approximately 5 and ½ years.
3. Mr. Fischer called his supervisor immediately after the accident and advised his supervisor that he must've fallen asleep.
4. The police officer who investigated the accident wrote on the accident report that our driver, Mr. Fischer, went to sleep, causing him to lose control of the vehicle.
5. This accident not only caused injury to the employee and major property damage, but in going through this intersection into a private yard where there was no road, he put Sysco at a huge liability risk. Had he hit a car which could have been in front of our vehicle or a car or cars going through the intersection at the time he went through without stopping or turning, it would have severely injured them if not killed them. The safety of the general public was endangered as well as the life of the employee.
6. The accident review committee is composed of a group of peers, all CDL-A certified. In their meeting, they determined, based on the facts, that this was a "major" accident and classified it accordingly.

Mr. Fischer's worker's compensation claim has nothing to do with the fact that carelessness caused this accident. Sysco provided immediate care for the employee and has continued to care for his injuries and wish Mr. Fischer a speedy recovery. However, his actions alone caused the injuries.

In an effort to be consistent with past terminations, and to be a responsible company within our communities as well as provide safe driving as required under the Department of Transportation, I vote that that the termination stand.

EXHIBIT E



MEMORANDUM

To: Lynda Wheat

From: Danny Ralph *DR*

Date: October 12, 2004

RE: Frank Fisher's Appeal

I have reviewed the information regarding Mr. Fisher's accident, termination and appeal. The investigating officer's opinion as stated in his report was that Mr. Fisher went to sleep causing him to lose control of the vehicle. Immediately following the accident when asked how the accident happened by his supervisor, Mr. Fisher stated "uh I don't know, maybe I fell asleep." Data from the tripmaster report shows an abrupt stop from 56 to 0 miles per hour in 1 second after passing through a four lane intersection.

It is my opinion that Mr. Fisher did not exercise proper care and did not follow safe driving procedures resulting in an accident with significant property damage and personal injury to himself. I find that his termination is justified in the interest of his and the safety of the general public and must deny his appeal.

WDR:la

EXHIBIT F



MEMORANDUM

To: Lynda Wheat

From: Chris O'Keefe

Date: October 18, 2004

RE: Frank Fisher's Appeal

Based on the facts presented, I must agree with the Accident Review Committee that Mr. Fisher's driving was "careless" and the incident was "major". Mr. Fisher responded to his supervisor that morning when asked what had happened, "maybe I fell asleep". The officer investigating the accident also stated that Mr. Fisher "went to sleep causing him to lose control of the vehicle." And according to the vehicle's tripmaster the vehicle went from 56 to 0 mph in less than 5 seconds, causing injury to Mr. Fisher as well as extensive damage to the vehicle. We cannot take the risk of this happening again. Therefore I must vote to deny Mr. Fisher's appeal to overturn his termination.

EXHIBIT G

EEOC FORM 131 (5/01)

U. S. Equal Employment Opportunity Commission

Linda Wynda Assistant V. P. Human Resource SYSCO FOOD SERVICE CENTRA P. O. Box 1750 Calera, AL 35040	PERSON FILING CHARGE
	Frank Fisher
	THIS PERSON (check one or both) <input type="checkbox"/> Claims To Be Aggrieved <input type="checkbox"/> Is Filing on Behalf of Other(s)
EEOC CHARGE NO. 130-2005-01796	

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- | | |
|--|--|
| <input type="checkbox"/> Title VII of the Civil Rights Act | <input type="checkbox"/> The Americans with Disabilities Act |
| <input checked="" type="checkbox"/> The Age Discrimination in Employment Act | <input type="checkbox"/> The Equal Pay Act |

The boxes checked below apply to our handling of this charge:

- ☒ No action is required by you at this time.
- ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.
- ☐ Please provide by _____ a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- ☐ Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- ☐ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by _____ to _____
 If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Murry A. Gosa,
Intake Supervisor

EEOC Representative

Telephone: **(205) 212-2119**

Birmingham District Office
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☐ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☒ AGE ☐ DISABILITY ☐ RETALIATION ☐ OTHER

ISSUES: Discharge

DATE(S) (on or about): EARLIEST: 07-23-2004 LATEST: 07-23-2004

Date	Name / Title of Authorized Official	Signature
Jan 24, 2005	Bernice Williams-Kimbrough, District Director	<i>Bernice Williams-Kimbrough</i> (RM)

Sys 0267

Enclosure with EEOC
Form 131 (5/01)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

EXHIBIT H

EEOC Form 181 (2/88)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Frank Fisher
3907 West 19th Street
Panama City, FL

From: Birmingham District Office
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

130-2005-01796

Murry A. Gosa,
Intake Supervisor

(205) 212-2119

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☒ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

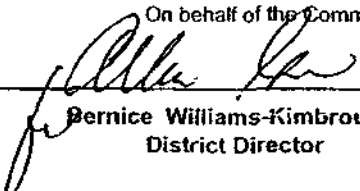
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Enclosure(s)


Bernice Williams-Kimbrough,
District Director

3/29/05
(Date Mailed)

cc: Linda Wynda
Assistant V. P. Human Resource
SYSCO FOOD SERVICE CENTRA
P. O. Box 1750
Calera, AL 35040

Fischer v. Sysco
Sys 0265

Enclosure with EEOC
Form 161 (3/88)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was mailed to you (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/00 to 12/1/00, you should file suit before 7/1/02 -- not 12/1/02 -- in order to recover unpaid wages due for July 2000. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII and the ADA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

Fischer v. Sysco
Sys 0266

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-cv-00763-DRB
)	
SYSCO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., et al.,)	
)	
Defendants.)	

AFFIDAVIT OF DANNY HARPST

1. My name is Danny Harpst. My date of birth is February 16, 1962 and I am competent to testify. The matters set forth below are based upon my personal knowledge.

2. I am employed as the Transportation Manager for Sysco Food Services of Central Alabama, Inc. and have been employed in that capacity for almost eight years.

3. As the Transportation Manager, I am involved in the hiring and termination process of shuttle drivers. I joined Smokey Parker and Eddie O'Connor in making the decision to terminate Frank Fischer in July of 2004, following the investigation of Mr. Fischer's involvement in an accident on June 29,

2004. The termination letter that I presented to Mr. Fischer is attached as Exhibit A.

4. The sole reason that Mr. Fischer was terminated was because he was involved in a major accident as defined by the Accident Review Committee and the Accident Review Policy. The Accident Review Policy is attached hereto as Exhibit B. The Accident Review Committee is comprised of other Sysco drivers who have had no more than one minor accident within the last revolving year.

5. I was involved, with others, in investigating the accident of Mr. Fischer. We determined that no factors other than inattention as admitted by the driver could have contributed to the accident. Specifically, Mr. Fischer told his immediate supervisor, Mr. John Morris that he may have fallen asleep. The police officer who investigated the accident concluded that Fischer had fallen asleep. In addition, Mr. Fischer, in a written statement, indicated that he did not realize he was close to an intersection where he would be required to stop, he hit his brakes, slid through the intersection, and went into a ditch. The information collected from our investigation was turned over to the Accident Review Committee for consideration. The following investigation documents are attached:

Exhibit C – Uniform Traffic Accident Report,

Exhibit D – Driver's Report of Accident,

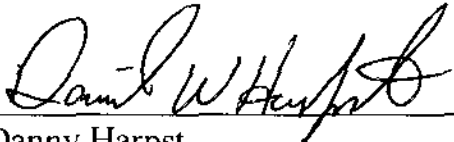
Exhibit E – Handwritten Statement of Frank Fischer on Accident,

Exhibit F – Accident Accountability Statement,

Exhibit G – Supervisor Incident Report, and


Exhibit H – Vehicle Event Report.

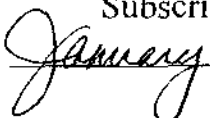
6. The above information is true and correct to the best of my knowledge.



Danny Harpst

STATE OF ALABAMA)

)
COUNTY)

Subscribed and sworn to before me on this the 26 day of
, 2007.



Notary Public

My commission expires: _____

[SEAL]

NOTARY PUBLIC
STATE OF ALABAMA
MY COMMISSION EXPIRES
MAY 15, 2009

EXHIBIT A



Transportation

MEMORANDUM

July 23, 2004

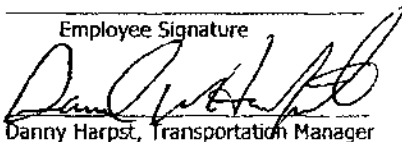
To: Frank E. Fischer
From: Danny Harpst,
Transportation Manager
Subject: Dismissal


On Tuesday, June 29, 2004, you had an accident where you proceeded through a stoplight and four lanes of traffic at the intersection of Highway 271 & 231 and hit an embankment.

During our investigation of the accident mentioned above, we could not determine any factors that could have contributed to the accident other than that of inattention admitted to by the driver. In your statement regarding the accident, you wrote, "didn't realize I was close to 231 & 271 intersection and had to stop - slid through intersection and went into ditch." The accident review committee determined the accident to be classified as a "Major Accident". Our Accident Review Policy states, "A preventable accident is an accident that is caused by an individual who failed to do everything reasonable to prevent the accident." The policy goes on to state "An accident will be classified as 'major' if the individual who caused the accident was 1. Determined to be working under the influence of alcohol or drugs or 2. The accident was a result of gross negligence or reckless behavior." The committee determined that your actions fell within the guidelines of part 2.

Frank, your actions on June 29th disregarded company policies and rules, as well as, safety for yourself and the public. By your own admission, this was an act of not paying attention. Frank, you not only placed yourself in unnecessary danger, but the general public as well. Should someone have been crossing that intersection at the time of your accident, the results would have been catastrophic. You have violated Company Policy No. 408: Rules of Conduct, Rule No. 10, Safety & Health, Rule No. 19, Negligence, as well as, our Defensive Driving Program.

Due to your actions, your employment with Sysco Food Services of Central Alabama is terminated effective today. You may appeal this decision to the Employee Appeals Board by submitting your appeal, in writing, to the Human Resources Department within (3) business days of the termination. A copy of the procedure by which to appeal is attached to this memo.

Employee Signature

Danny Harpst, Transportation Manager

7-27-04
Date

Witness

Frank wouldn't sign Statement

PS. Your contact for your worker's compensation claim is Nicole Bobe, Gallagher Bassett Insurance Company at 1-800-843-8999 extension 242.

EXHIBIT B

ACCIDENT REVIEW POLICY

The purpose of the Accident Review Policy and Committee is to prevent future accidents from happening whenever possible.

DEFINITIONS

Preventable Accident:

A preventable accident is an accident that is caused by an individual who failed to do everything reasonable to prevent the accident. A preventable accident can happen within the distribution facility, on the grounds of the facility, or on the road. A vehicle, forklift, or other tools may or may not be involved. The safety committee will determine whether or not an employee has done everything reasonable to prevent an accident.

Lost Time Accident:

An accident to an employee regardless of how long he/she has been on duty. Where he/she is sent to the doctor and/or home and is unable to work for his/her next scheduled workday.

Incident:

An accident to an employee regardless of how long he/she has been on duty. Where he/she is or is not sent to the doctor and/or home and is able to report back to work for his/her next scheduled workday.

Accident categories:

There are (3) accident classifications: minor, serious, and major. The safety committee will decide into which classification each preventable accident will fall using the following guidelines:

A. Major Accident

An accident will be classified as "major" if the individual who caused the accident was:

1. The accident was a result of gross negligence or reckless behavior.
2. If determined the employee was working under the influence of alcohol or drugs, Management will make the final decision.

In either case, the amount of property damage or degree of injury to another individual is immaterial.

B. Serious Accident

An accident will be considered "serious" if the individual who caused the accident was careless and the accident resulted in bodily injury or resulted in property damage.

C. Minor Accident

The accident will be "minor" if the individual causing the accident was careless but the resulting injury was slight and/or the damage was a small amount.

Safety Committee

The Safety Committee will make determinations as to which category each accident will be classified. The Safety Committee will also consist of peers of the employee involved in the accident that have had no more than 1 minor accident within the last revolving year. Employees with accidents found non-preventable will also be allowed to serve on the committee.

The individual involved in an accident, if he or she chooses, will have the opportunity to explain the circumstances surrounding the accident to the committee.

Disciplinary Actions

	Verbal Warning	Written Warning	1 Day Suspension	Termination
Minor	1 st	2 nd	3 rd	4 th
Serious		1 st	2 nd	3 rd
Major	Determined by Management			

A combination of two minors and one serious can include disciplinary action up to and including termination. A combination of one minor and one serious is a one-day suspension. Disciplinary action is based on a twelve month rolling history. An employee involved in any type of accident at work with a total (any combination) cost of \$150.00 or more will be asked to submit to a urine drug screen.

Reporting an Accident

All accidents, no matter how minor, must be reported immediately to your immediate Supervisor or Manager. **Failure to report an accident or intentional false information about an accident will be cause for disciplinary action up to and including termination.**

Exclusions

As discussed in section A above, management according to company policy will handle any accidents containing illegal substance or alcohol.

Reckless Driving Complaints

The Accident Review Committee will also review calls received due to dangerous/reckless driving by Transportation Delivery Associates. The complaints will be reviewed based on the merits and credibility of the call. These incidents will be reviewed in the same way as accidents.

Safety Violations- (No Accident or Injury)

All Reports of safety violations will be reviewed and appropriate disciplinary action, if any, will be taken by management.

Revised February 2003

EXHIBIT C

OPS

Shaded Areas To Be Used By Data Processing Only

4389

Sheet 1 of 1 Sheet(s)

Map of India No.

Local Case No.

~~05335~~

Fischer v. Sysco
Sys 0123

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Alabama Uniform Traffic Accident Report
Truck/Bus Supplemental SheetAST-347
1/94Unit No. 1
(same as on main report)Sheet 2 of 2 Sheets

General Instructions																									
Complete this form for each qualifying vehicle ONLY if the accident meets BOTH of the following criteria: 1. The accident involved a qualifying vehicle (truck with 6 or more tires or Haz/Mat placard, or a bus designed to carry 16 or more, including driver) and; 2. The accident resulted in at least one of the following: A. one or more fatalities B. one or more persons injured and taken from the scene for immediate medical attention, or C. one or more involved vehicles had to be towed from the scene as a result of disabling damage or had to receive assistance to leave.																									
Screening Information																									
Number of Qualifying Vehicles: Trucks with 6 or more tires or Haz/Mat placard <u>1</u> Buses designed to carry 16 or more (including driver) _____ Number of vehicles towed from scene due to damage or provided assistance _____	Number of Persons: Sustaining fatal injuries _____ Transported for immediate medical treatment _____																								
Vehicle Information																									
Gross Vehicle Weight Rating (GVWR) A. Truck, tractor or bus <u>3,470</u> B. Trailer or trailers (total) <u>32,000</u> Total GVWR for unit (A+B) <u>35,470</u> Total number of axles <u>5</u>	Hazardous Material Involvement Did vehicle have a Haz/Mat placard ____ Yes ____ No If Yes, include following information from placard A. Name or 4-digit number from diamond or box _____ B. The 1-digit number from bottom of diamond _____ Was hazardous material released from THIS vehicle's cargo? ____ Yes ____ No																								
Vehicle Configuration (circle one number) 1. Bus 2. Single unit truck (2 axles/ 6 or more tires) 3. Single unit truck (3 or more axles) 4. Truck with trailer 5. Truck tractor only (bobtail) 6. Tractor with semi-trailer ⑦ Tractor with double trailers 8. Tractor with triple trailers 9. Unknown class heavy truck 0. Any other 4-tired vehicle																									
Cargo Body Type (circle one number) 1. Bus ② Van/enclosed box 3. Cargo tank 4. Flatbed 5. Dump 6. Concrete mixer 7. Auto transporter 8. Garbage/ refuse 9. Other _____																									
Motor Carrier Information																									
NOTE: If NOT a motor carrier, enter NONE under Carrier Name, 0 for None under Carrier Identification Numbers, and go to Sequence Of Events Section Carrier Name <u>Sysco Food Service</u> Source (circle one number) ① Vehicle side 2. Shipping papers 3. Driver 4. Other Carrier mailing address (Street or P.O. Box) <u>1000 Sysco Drive</u> City, State, Zip <u>Calera, AL 35040</u> Carrier Identification Numbers (_____ None = 0) US DOT <u>792056</u> ICC MC _____ STATE NO. _____ STATE _____																									
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Note: for THIS vehicle - list up to four Event #1 <u>1</u> Event #2 _____ Event #3 _____ Event #4 _____																									
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Signature of Reporting Officer	Officer ID _____ Reporting Police Agency ORI _____ Date _____ Time _____ AM/PM																								

Fischer v. Sysco
Sys 0125

Definitions

Truck

A motor vehicle designed, used or maintained primarily for the transportation of property. For the purpose of this form the vehicle must also meet one of the following criteria:

- Have at least 6 tires on the ground, or
- Carry a Hazardous Material Placard.

Bus

A motor vehicle providing seats for 16 or more persons including the driver and used primarily for the transportation of persons.

Trailer

A non-power vehicle towed by a motor vehicle.

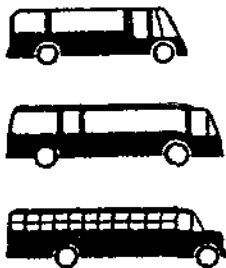
Reportable Accident

A highway related incident normally investigated by a police officer and reported on a standard accident report form involving one or more trucks or buses (as defined here) which results in:

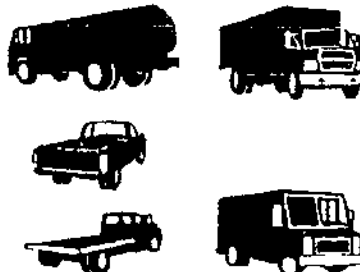
- One or more fatalities, or
- One or more non-fatal injuries requiring transportation for the purpose of obtaining immediate medical treatment, or
- One or more of the vehicles being removed from the scene as a result of disabling damage, or
- One or more vehicles requiring intervening assistance before proceeding under its own power.

Typical Vehicle Silhouettes

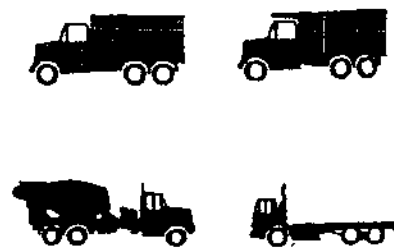
1. Bus



2. Single unit truck - 2 axes / 6 tires



3. Single unit truck - 3 axes



4. Truck with trailer



5. Truck tractor (bobtail)



6. Tractor with semi-trailer



7. Tractor with double trailers



8. Tractor with triple trailers



Typical Hazardous Material Placards



EXHIBIT D

US/02/04 US:04 FAA 4012010000
JUL-07-2004 14:17

GALLAGHER DASSLER 0100
SYSCO CENTRAL AL

21010
P.03/05

Driver's Report Of Accident

To Be Filled Out By Driver Immediately After Any Accident And Turned In When Done With Route.

Date: 6-29-4 Time of Accident: AROUND 130-2AM
Name: FRANK FISCHER Driver#: 2408
Address: 3907 W 19th St PANAMA CITY FL 32405
Phone#: 850 822 2165 Age: 50 Birthday: 12-24-53
Social Security#: 394600920 License#: F260265534640
Date of Hire: MIV 1977 # of Hours on Job: ABOUT 8 Route#: _____

Accident Information

Tractor#: 2006 Trailer#: _____
Tractor VIN number _____
Location of Accident (Including City and State): 271 + 231 INTERSECTION
MONTGOMERY AL
Brief Description of Accident: CAME TO INTERSECTION SOONER
THAN EXPECTED - HIT BREAKS AND WENT INTO
RITCH

Other Party Information

Name: NONE INS. Policy Name and # _____
Address: _____
Phone#: _____ License Plate#: _____
Property Make, Model, and Year: _____
Damage to Other Vehicle: _____
Signature: Frank Fischer Date: 7-3-4

EXHIBIT E

On Monday the 28th of June
around 2AM I was heading back
to Panama City yard with 2 full
trailers - went south on 65 and
turned off at 85 exit going toward
Atlanta - turned off at exit #9
which is Hwy 271 and headed east
towards 231 - didn't realize I
was close to 231 + 271 intersection
and had to stop - slid through
intersection and went into ditch

Fischer

EXHIBIT F

JUL-07-2004 14:17

SYSCO CENTRAL AL

P.04/05

Accident Accountability Statement

Date: 7-3-4

Name: FRANK FISCHER

Give Description Of Accident Or Injury:

CAME TO INTERSECTION SOONER THAN EXPECTED AND
COULDN'T STOP - SHOULD'VE ON LEFT SIDE GOT
HURT - VERY LARGE BRUISE ON GUT + UPPER ARM
DOC SAYS NEED MRI - HEAD HIT WINDOW EVEN
THOUGH SEAT BELT WAS ON

Give Statement How To Prevent A Future Occurrence and Preferred Work Method to Follow: ?

Section 13A-11-124 (Act 1994, No. 94-653, §1.)

Making false statements to obtain workers' compensation benefits.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining compensation, as defined in Section 23-5-1(1), as amended, for himself or herself or any other person is guilty of a Class C felony. (punishable by a fine of up to \$5,000.00 and a jail term of one to ten years).

Frank Fischer
Employee Signature

Supervisor Signature

Forward Original To The Safety Department

EXHIBIT G



SUPERVISOR INCIDENT REPORT

Transportation to complete sections A, B and C.
Operations to complete sections A and C.

A:

Employee name: Frank Fischer

Date: 06/30/04

Job description: Shuttle Driver Date of incident: 06/29/2004

Time of incident: 12:00 AM-1:30 AM Time reported: 12:30 AM-1:30 AM

Location of incident: Intersection of HWY 271/HWY 231 Montgomery, Alabama

Description of damage to any equipment or property:
Front of tractor, Dolly, Refer unit of trailer

Description of incident:

Between the hours of 1230-0130AM on 29 June 2004, I received a cell phone call from Frank Fischer stating: I've had an accident. I asked how bad and are you okay? Frank stated: Major accident and that my left shoulder hurts. I asked where are you and what happened? Frank stated: He was south bound on HWY 271 and ran off the road at the intersection of HWY 271 and HWY 231. I asked how did that happened? Frank stated: Uh I don't know, maybe I fell asleep. I told him I'll call him back. At that point I called other supervisors about the accident. I called Frank again and asked the condition of the trailers and the cases. Frank stated: The trailers were vertical but probably can't be used. I also called Frank several times to check on his condition and the status of the Ambulance and Police.

Hazard Assessment: ☐ Dry ☐ Cooler ☐ Freezer ☐ Maintenance

☐ Shipping ☐ Receiving ☒ Transportation

☐ Other: _____

Investigation summary:

Between the hours of 0600-0645 on 29 June 2004, I received a cell phone call from John Cruz asking about Frank Fischer condition. During our conversation John made the comment he called Frank on the two-way early that morning and warned him about the construction barriers at the end of HWY 271 before you approach HWY 231 and told him to use caution in that area. I asked John where was Frank when he talked to him. John replied: South bound on I-65.

1 of 2

Is further investigation of this incident necessary: ☒ Yes ☐ No

What do you think caused this incident... "Root Cause" If stuck ask, "if you were in the exact same situation right now what would you do different?"

Action to be taken: Accident Review Committee

Include a Preferred Work Method to prevent or control similar incidents:

Use safe driving habits throughout trip.

Section B to be completed if incident involves a company vehicle B.

Chemical Exposure: (to include fuel spills) N/A

Did the weather contribute to the incident. ☐ Yes ☒ No

What were the conditions at the time of incident: ☐ Day ☒ Night ☐ Dry ☒ Raining ☐ Snow ☐ Ice
☐ Other

What caused the incident: Under investigation

Section C to be completed by every department C.

Supervisor print name: John Morris

Supervisor sign name: _____

Phone extension: _____

Date: _____

2 of 2

EXHIBIT H

P. 07/12



Sysco Of Central Alabama

SYSCO CALERA
1000 Sysco Drive
Calera, AL 35040

Date : 8/28/2004
Vehicle : 2008
Odometer : 339950.9

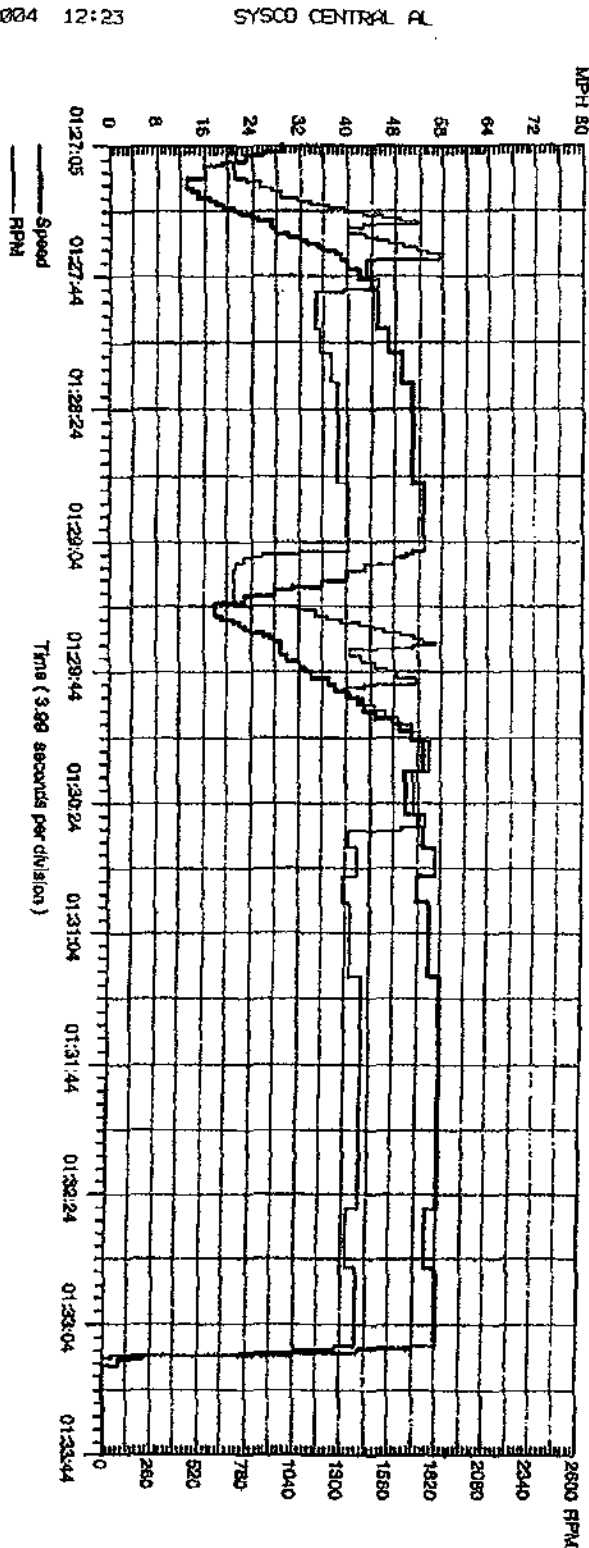
Vehicle Event Report

Vehicle: Frank Fischer ID: 2408

Why Number: 13
Event Date At: 8/28/2004 01:33:44

Data Sample Rate: 1 Second Between Samples
Shortest Recorded Duration: 1 second

Cause: Impact
Graph Number 1 of 1



OTRAX 2004 4/1/2004

Page: 8

Event Date At: 8/28/2004